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Sixth Edition

CRIMINAL [CRIMJIG]

Chapters 17–End

2021–2022 Supplement

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Prepared by the

MINNESOTA DISTRICT JUDGES ASSOCIATION
COMMITTEE ON CRIMINAL JURY
INSTRUCTION GUIDES

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Reporter



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2021–2022 SUPPLEMENT HIGHLIGHTS

The 2021–2022 supplement to the Sixth Edition of the Criminal Jury Instruction Guides includes a number of significant changes and updates:

- An implicit bias instruction to be given before empanelment and at the close of trial.
- Police use of force, including deadly force, restricting certain behaviors.
- Third-degree murder, including changes to the “depraved mind” instruction arising out of *State v. Coleman*, 957 N.W.2d 72, 80 (Minn. 2021). Other changes to the murder instructions included violation of a restraining order and death arising from the sale of a controlled substance.
- Criminal sexual conduct statutes were affected by legislative changes following the case of *State v. Khalil*, 956 N.W.2d 627, 642 (Minn. 2021), dealing with mental incapacity. The legislature also changed the definitions of force and coercion, affecting a number of instructions which, due to time constraints on submission for publication, the Committee was unable to fully address. Review of force and coercion definitions throughout the criminal sexual conduct instructions should be reviewed by the user. CRIMJIG 12.01 correctly states those definitions.
- Instructions on Robbery (Chapter 14) and Theft (Chapter 16) were redrafted for clarity. The instruction on Value and related instructions were streamlined.
- Child abuse instructions in Chapter 13, as well as violation of harassment restraining orders, were addressed.
- Arson and Criminal Damage to Property instructions (Chapter 18) were clarified and definitions to aid the jury in its understanding were added.
- Certain Possession of a Controlled Substance (Chapter 20) instructions were amended.
- A number of instructions regarding “firearms” were redrafted following the decision in *State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020).

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Stephan E. Forestell

Reporter

Committee on Criminal Jury Instructions

Minnesota District Judges Association

2021

PREFACE

This supplement to the Minnesota Jury Instruction Guides—Criminal (CRIMJIG), Sixth Edition, has been prepared by the Minnesota District Judges Association Committee on Criminal Jury Instructions, Stephen E. Forestell, Esq., Reporter. It reflects current case law of the Minnesota Supreme Court, Minnesota Court of Appeals, and the Minnesota Legislature through May, 2021. Certain portions of the legislative special session changing portions of statutes addressing criminal sexual conduct have been incorporated, but not all could be addressed due to publishing time constraints.

Stephen E. Forestell
Reporter
Committee on Criminal Jury Instructions
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Table of Contents

Volume 10

PART I. THE GENERAL PART

A. GENERAL INSTRUCTIONS TO THE JURY

CHAPTER 1. INSTRUCTIONS TO THE JURY BEFORE TRIAL

CRIMJIG 1.01 Instructions to the Jury Panel before Empanelment

CHAPTER 2. INSTRUCTIONS TO THE JURY DURING TRIAL

CRIMJIG 2.01 Cautionary Instruction on Receipt of Testimony of Other Crimes or Occurrences

CRIMJIG 2.07 Cautionary Instruction on Receipt of Testimony of Other Domestic Abuse Occurrences

CRIMJIG 2.09 Cautionary Instruction on Accomplice Testimony

CHAPTER 3. INSTRUCTIONS TO JURY AT CLOSE OF CASE

CRIMJIG 3.03 Proof Beyond a Reasonable Doubt

CRIMJIG 3.04 Duties of Jurors: Selection of Foreperson; Unanimous Verdict; Deliberation; Return of Verdict; Advising of Additional Issues

CRIMJIG 3.05 Direct and Circumstantial Evidence

CRIMJIG 3.06 Rulings on Objections to Evidence

CRIMJIG 3.16 Testimony as to Other Crimes or Occurrences

CRIMJIG 3.18 Accomplice Testimony

CRIMJIG 3.20 Lesser Crimes

CRIMJIG 3.23 Multiple Offenses Considered Separately

CRIMJIG 3.30 Closing Instruction on Receipt of Testimony of Other Domestic Abuse Conduct

CRIMJIG 3.31 Causation

CRIMJIG 3.32 “Know”—“Had Reason to Know”—“Intentionally”—
“With Intent”—“Recklessly”—Defined

CRIMJIG 3.35 Implicit Bias *[New]*

B. GENERAL PRINCIPLES OF CRIMINAL LAW

CHAPTER 4. LIABILITY FOR CRIMES OF ANOTHER

CRIMJIG 4.01 Liability for Crimes of Another

CHAPTER 5. ANTICIPATORY CRIMES

CRIMJIG 5.18 Solicitation of a Juvenile to Commit a Crime—
Elements

MINNESOTA JURY INSTRUCTION GUIDES

CHAPTER 6. DEFENSES—MENTAL ILLNESS OR COGNITIVE IMPAIRMENT

- CRIMJIG 6.02 Defense of Mental Illness or Cognitive Impairment
CRIMJIG 6.03 Burden of Proof

CHAPTER 7. DEFENSES—MISCELLANEOUS

- CRIMJIG 7.02 Entrapment
CRIMJIG 7.05 Justifiable Taking of Life *[Retitled]*
CRIMJIG 7.06 Authorized Use of Force *[Retitled]*
CRIMJIG 7.07 Self-Defense—Revival of Aggressor's Right of Self-Defense
CRIMJIG 7.11 Authorized Use of Deadly Force by Peace Officers *[New]*
CRIMJIG 7.12 Authorized Use of Non-Deadly Force by Peace Officers *[New]*
CRIMJIG 7.13 Defense of Self or Others—Death Unintentional Or Death Not The Result *[New]*
CRIMJIG 7.14 Defense of Property—Death Unintentional Or Death Not The Result *[New]*
CRIMJIG 7.15 Defense of Self or Others—Justifiable Intentional Taking Of Life *[New]*
CRIMJIG 7.16 Defense of Dwelling—Justifiable Intentional Taking Of Life *[New]*
CRIMJIG 7.17 Revival of Aggressor's right of Self-Defense *[New]*
CRIMJIG 7.18 Authorized Use of Deadly Force By a Peace Officer *[New]*
CRIMJIG 7.19 Authorized Use of Non-Deadly Force by an Officer *[New]*

CHAPTER 8. SENTENCING PROCEEDINGS

- CRIMJIG 8.01 Mandatory Minimum—Possession of a Dangerous Weapon or Firearm

SPECIAL VERDICT FORMS

- CR8-SVF Aggravating Factors—Verdict Form *[Retitled]*

PART II. SPECIFIC CRIMES

A. CRIMES AGAINST THE PERSON

CHAPTER 11. HOMICIDE

- CRIMJIG 11.13 Murder in the First Degree—Child Abuse—Elements
CRIMJIG 11.15 Murder in the First Degree—Domestic Abuse—Elements
CRIMJIG 11.21 Murder of an Unborn Child in the First Degree—Criminal Sexual Conduct in the First or Second Degree—Elements
CRIMJIG 11.23 Murder of an Unborn Child in the First Degree—While Committing Certain Crimes—Elements

TABLE OF CONTENTS

CRIMJIG 11.25	Murder in the Second Degree—Elements
CRIMJIG 11.27	Murder in the Second Degree—Drive-by Shooting— Elements
CRIMJIG 11.29	Murder in the Second Degree—While Committing a Felony—Elements
CRIMJIG 11.30	Murder in the Second Degree—Restraining Orders— Defined [<i>Retitled</i>]
CRIMJIG 11.31	Murder in the Second Degree—Restraining Orders— Elements [<i>Retitled</i>]
CRIMJIG 11.33	Murder of an Unborn Child in the Second Degree— Elements
CRIMJIG 11.35	Murder of an Unborn Child in the Second Degree— While Committing a Felony—Elements
CRIMJIG 11.36	Murder in the Second Degree—Issue of Heat of Passion—Elements
CRIMJIG 11.37	Murder in the Third Degree—Depraved Mind— Defined
CRIMJIG 11.38	Murder in the Third Degree—Depraved Mind— Elements
CRIMJIG 11.39	Murder in the Third Degree—Controlled Substances—Defined
CRIMJIG 11.40	Murder in the Third Degree—Controlled Substances—Elements
CRIMJIG 11.42	Murder of an Unborn Child in the Third Degree— Depraved Mind—Elements
CRIMJIG 11.44	Manslaughter in the First Degree—Heat of Passion—Elements
CRIMJIG 11.46	Manslaughter in the First Degree—While Committing Assault in the Fifth Degree— Misdemeanor or Gross Misdemeanor—Elements
CRIMJIG 11.47	Manslaughter in the First Degree—Controlled Substances—Defined
CRIMJIG 11.48	Manslaughter in the First Degree—Controlled Substances—Elements
CRIMJIG 11.56	Manslaughter in the Second Degree—Elements
CRIMJIG 11.61	Criminal Vehicular Homicide—Defined
CRIMJIG 11.62	Criminal Vehicular Homicide—Elements
CRIMJIG 11.64	Criminal Vehicular Homicide Leaving the Scene— Death—Elements
CRIMJIG 11.65	Criminal Vehicular Operation Resulting in Death of an Unborn Child—Defined
CRIMJIG 11.66	Criminal Vehicular Operation Resulting in Death of an Unborn Child—Elements
CRIMJIG 11.67	Criminal Vehicular Operation Resulting in Great Bodily Harm—Defined
CRIMJIG 11.68	Criminal Vehicular Operation Resulting in Great Bodily Harm—Elements
CRIMJIG 11.69	Criminal Vehicular Operation Resulting in Great Bodily Harm to an Unborn Child—Defined

MINNESOTA JURY INSTRUCTION GUIDES

- CRIMJIG 11.70 Criminal Vehicular Operation Resulting in Great Bodily Harm to an Unborn Child—Elements
- CRIMJIG 11.71 Criminal Vehicular Operation Resulting in Substantial Bodily Harm—Defined
- CRIMJIG 11.72 Criminal Vehicular Operation Resulting in Substantial Bodily Harm—Elements
- CRIMJIG 11.73 Criminal Vehicular Operation Resulting in Bodily Harm—Defined
- CRIMJIG 11.74 Criminal Vehicular Operation Resulting in Bodily Harm—Elements
- CRIMJIG 11.76 Criminal Vehicular Operation—Leaving the Scene—Great Bodily Harm, Substantial Bodily Harm, Bodily Harm—Elements
- CRIMJIG 11.78 Criminal Vehicular Operation—Leaving the Scene—Substantial Bodily Harm—Elements
- CRIMJIG 11.87 Criminal Vehicular Homicide—Failure to Maintain—Death—Elements
- CRIMJIG 11.88 Criminal Vehicular Homicide—Failure to Maintain—Bodily Harm—Defined
- CRIMJIG 11.89 Criminal Vehicular Homicide—Failure to Maintain—Bodily Harm—Elements

CHAPTER 12. SEX CRIMES AND FAMILY CRIMES

- CRIMJIG 12.01 “Force” and “Coercion” Defined for Criminal Sexual Conduct
- CRIMJIG 12.02 Criminal Sexual Conduct in the First Degree—Fear of Great Bodily Harm, Force, Etc.—Defined
- CRIMJIG 12.03 Criminal Sexual Conduct in the First Degree—Fear of Great Bodily Harm, Force, Etc.—Elements
- CRIMJIG 12.04 Criminal Sexual Conduct in the First Degree—Sexual Penetration—Complainant Underage—Defined [*Retitled*]
- CRIMJIG 12.05 Criminal Sexual Conduct in the First Degree—Sexual Penetration—Complainant Underage—Elements
- CRIMJIG 12.09 Criminal Sexual Conduct in the First Degree—Significant Relationship—Complainant under 16—Use of Force—Elements
- CRIMJIG 12.11 Criminal Sexual Conduct in the First Degree—Complainant under 16—Significant Relationship—Elements
- CRIMJIG 12.12 Criminal Sexual Conduct in the Second Degree—Fear of Great Bodily Harm, Force, Etc.—Defined
- CRIMJIG 12.13 Criminal Sexual Conduct in the Second Degree—Fear of Great Bodily Harm, Force, Etc.—Elements
- CRIMJIG 12.14 Criminal Sexual Conduct in the Second Degree—Complainant Underage—Defined

TABLE OF CONTENTS

CRIMJIG 12.15	Criminal Sexual Conduct in the Second Degree— Complainant Underage—Elements
CRIMJIG 12.19	Criminal Sexual Conduct in the Second Degree— Significant Relationship—Complainant under 16—Elements
CRIMJIG 12.22	Criminal Sexual Conduct in the Third Degree— Mental Impairment, Physically Helpless— Defined
CRIMJIG 12.23	Criminal Sexual Conduct in the Third Degree— Mental Impairment, Mental Incapacity, Physically Helpless—Elements
CRIMJIG 12.24	Criminal Sexual Conduct in the Third Degree— Complainant Underage—Defined
CRIMJIG 12.25	Criminal Sexual Conduct in the Third Degree— Complainant Underage—Elements
CRIMJIG 12.29	Criminal Sexual Conduct in the Third Degree— Significant Relationship—Complainant 16 to 18— Elements
CRIMJIG 12.36	Criminal Sexual Conduct in the Fourth Degree— Force, Mental Deficiency, Etc.—Defined
CRIMJIG 12.38	Criminal Sexual Conduct in the Fourth Degree— Mentally Impaired, Mentally Incapacitated, Physically Helpless—Elements
CRIMJIG 12.39	Criminal Sexual Conduct in the Fourth Degree— Complainant Underage—Defined
CRIMJIG 12.40	Criminal Sexual Conduct in the Fourth Degree— Complainant Underage—Elements
CRIMJIG 12.42	Criminal Sexual Conduct in the Fourth Degree— Significant Relationship—Complainant 16 to 18— Use of Force, Etc.—Elements
CRIMJIG 12.44	Criminal Sexual Conduct in the Fourth Degree— Significant Relationship—Complainant 16 to 18— Elements
CRIMJIG 12.52	Criminal Sexual Conduct in the Fifth Degree— Elements
CRIMJIG 12.54	Criminal Sexual Conduct in the Fifth Degree— Victim under 16—Elements
CRIMJIG 12.55	Criminal Sexual Conduct in the Third and Fourth Degrees—Complainant Underage—Mistake of Age as a Defense
CRIMJIG 12.56	Criminal Sexual Conduct—Defendant Not Guilty if Cohabiting with or Married to Complainant
CRIMJIG 12.66	Prostitution—Engages in Prostitution, Hires, Offers, or Agrees to Sex—Defined
CRIMJIG 12.67	Prostitution—Engages in Prostitution, Hires, Offers, or Agrees to Sex—Elements
CRIMJIG 12.74	Prostitution—Additional Issue—School Zone/Park Zone
CRIMJIG 12.76	Solicitation of a Child to Engage in Sexual Conduct—Elements

MINNESOTA JURY INSTRUCTION GUIDES

- CRIMJIG 12.76.1 Solicitation of a Child to Engage in Sexual Conduct—Mistake of Age as a Defense *[New]*
- CRIMJIG 12.78 Sexual Performance—Use of Minors—Elements
- CRIMJIG 12.82 Sexual Performance—Use of Minors—Dissemination—Elements
- CRIMJIG 12.87 Indecent Exposure—Defined
- CRIMJIG 12.88 Indecent Exposure—Elements
- CRIMJIG 12.89 Indecent Exposure in Presence of a Minor under 16—Defined
- CRIMJIG 12.90 Indecent Exposure in Presence of a Minor under 16—Elements
- CRIMJIG 12.99 Failure to Register as a Predatory Offender—Defined
- CRIMJIG 12.100 Failure to Register as a Predatory Offender—Elements *[Retitled]*
- CRIMJIG 12.101 Failure to Register as a Predatory Offender—Convicted or Adjudicated Delinquent under Federal Law or Law of Another State—Elements
- CRIMJIG 12.102 Failure to Register as a Predatory Offender—Committed Pursuant to Court Order—Elements
- CRIMJIG 12.103 Failure to Register as a Predatory Offender—Mental Commitment After Trial—Elements
- CRIMJIG 12.105 Dissemination of Pornographic Work Involving Minors—Elements
- CRIMJIG 12.106 Possession of Pornographic Work Involving Minors—Defined
- CRIMJIG 12.107 Possession of Pornographic Work Involving Minors—Elements
- CRIMJIG 12.112 Criminal Sexual Conduct in the Third Degree—Correctional Facility Employee Misconduct—Defined
- CRIMJIG 12.113 Criminal Sexual Conduct in the Third Degree—Correctional Facility Employee Misconduct—Elements
- CRIMJIG 12.114 Criminal Sexual Conduct in the Fourth Degree—Correctional Facility Employee Misconduct—Defined
- CRIMJIG 12.115 Criminal Sexual Conduct in the Fourth Degree—Correctional Facility Employee Misconduct—Elements
- CRIMJIG 12.116 Criminal Sexual Conduct in the Third Degree—Special Transportation Employee Misconduct—Defined
- CRIMJIG 12.117 Criminal Sexual Conduct in the Third Degree—Special Transportation Employee Misconduct—Elements
- CRIMJIG 12.118 Criminal Sexual Conduct in the Fourth Degree—Special Transportation Employee Misconduct—Defined

TABLE OF CONTENTS

CRIMJIG 12.119	Criminal Sexual Conduct in the Fourth Degree— Special Transportation Employee Misconduct— Elements
CRIMJIG 12.120	Criminal Sexual Conduct in the Third Degree— Massage or Other Bodywork—Defined
CRIMJIG 12.121	Criminal Sexual Conduct in the Third Degree— Massage or Other Bodywork—Elements
CRIMJIG 12.122	Criminal Sexual Conduct in the Fourth Degree— Massage or Other Bodywork—Defined
CRIMJIG 12.123	Criminal Sexual Conduct in the Fourth Degree— Massage or Other Bodywork—Elements
CRIMJIG 12.125	Electronic Solicitation of a Child to Engage in Sexual Conduct—Elements

CHAPTER 13. ASSAULT AND RELATED CRIMES AGAINST THE PERSON

CRIMJIG 13.01	Assault—Intent to Cause Fear
CRIMJIG 13.02	Assault—Infliction of Bodily Harm
CRIMJIG 13.04	Assault in the First Degree (Assault with Great Bodily Harm)—Elements
CRIMJIG 13.10	Assault in the Second Degree—Dangerous Weapon—Elements
CRIMJIG 13.12	Assault in the Second Degree—Dangerous Weapon—Substantial Bodily Harm—Elements
CRIMJIG 13.21	Assault in the Fourth Degree—On a Peace Officer—Defined
CRIMJIG 13.22	Assault in the Fourth Degree—On a Peace Officer—Elements
CRIMJIG 13.47	Domestic Assault—Intent to Cause Fear— Elements
CRIMJIG 13.48	Domestic Assault—Intent to Inflict Bodily Harm— Elements
CRIMJIG 13.49	Domestic Assault—Prior Conviction Within Ten Years—Felony—Intent to Cause Fear or Inflict Bodily Harm—Defined
CRIMJIG 13.52	Domestic Assault—Prior Conviction or Adjudication Within Ten Years—Gross Misdemeanor—Intent to Cause Fear or Inflict Bodily Harm—Defined
CRIMJIG 13.56	Violation of (an Order for Protection) (a Domestic Abuse No Contact Order) (a Restraining Order)— Elements
CRIMJIG 13.57	Harassment—Defined (OLD)
CRIMJIG 13.57.1	Harassment—Defined (NEW)
CRIMJIG 13.58	Harassment—Elements (OLD)
CRIMJIG 13.58.1	Harassment—Elements (NEW)
CRIMJIG 13.59	Stalking—Defined <i>[Retitled]</i>
CRIMJIG 13.60	Stalking—Elements <i>[Retitled]</i>

MINNESOTA JURY INSTRUCTION GUIDES

CRIMJIG 13.64	Violation of Harassment Restraining Order—Defined
CRIMJIG 13.65	Violation of Harassment Restraining Order—Elements
CRIMJIG 13.66	Defense to Harassment and Stalking <i>[Retitled]</i>
CRIMJIG 13.68	Mistreatment of Persons Confined—Child—Elements
CRIMJIG 13.71	Sexual Abuse—(Resident) (Patient) (Client)—Defined
CRIMJIG 13.72	Sexual Abuse—(Resident) (Patient) (Client)—Elements
CRIMJIG 13.82	Unreasonable Restraint of Child—Defined
CRIMJIG 13.83	Unreasonable Restraint of a Child—Elements
CRIMJIG 13.84	Malicious Punishment of a Child—Defined
CRIMJIG 13.85	Malicious Punishment of a Child—Elements
CRIMJIG 13.86	Permitted Use of Reasonable Force Toward a Child
CRIMJIG 13.93	Child Endangerment—Exposure to Controlled Substances—Defined
CRIMJIG 13.94	Child Endangerment—Exposure to Controlled Substances—Elements
CRIMJIG 13.103	Coercion—Defined
CRIMJIG 13.104	Coercion—Elements
CRIMJIG 13.106	Threat of Violence—Threat to Commit a Crime of Violence—Defined <i>[Retitled]</i>
CRIMJIG 13.107	Threat of Violence—Elements <i>[Retitled]</i>
CRIMJIG 13.110	Threat of Violence—(Replica Firearms) (BB Guns)—Defined <i>[Retitled]</i>
CRIMJIG 13.111	Threat of Violence—(Replica Firearms) (BB Guns)—Elements <i>[Retitled]</i>
CRIMJIG 13.120	Disorderly Conduct—Defined
CRIMJIG 13.121	Disorderly Conduct—Elements
CRIMJIG 13.123	Public Nuisance—Elements

CHAPTER 14. ROBBERY

CRIMJIG 14.01	Simple Robbery—Defined
CRIMJIG 14.02	Simple Robbery—Elements
CRIMJIG 14.03	Aggravated Robbery—First Degree—Defined
CRIMJIG 14.04	Aggravated Robbery—First Degree—Elements
CRIMJIG 14.05	Aggravated Robbery—Second Degree—Defined
CRIMJIG 14.06	Aggravated Robbery—Second Degree—Elements

B. PROPERTY CRIMES

CHAPTER 16. THEFT AND RELATED OFFENSES

CRIMJIG 16.02	Theft—Taking Property of Another—Elements
CRIMJIG 16.06	Theft—Deception by False Representation (Including Theft by Check)—Elements
CRIMJIG 16.07	Theft—Issuance of Worthless Check—Defined

TABLE OF CONTENTS

CRIMJIG 16.08	Theft—Issuance of Worthless Check—Elements
CRIMJIG 16.12	Theft—Lost Property—Elements
CRIMJIG 16.14	Theft—Vending Machine—Elements
CRIMJIG 16.22	Theft—Motor Vehicle—Elements
CRIMJIG 16.32	Theft of Corporate Property—Elements
CRIMJIG 16.34	Unauthorized Distribution of Corporate Property— Elements
CRIMJIG 16.38	Rustling and Livestock Theft—Elements
CRIMJIG 16.40	Rustling and Livestock Theft—Purchasers, Sellers, Etc.—Elements
CRIMJIG 16.50	Receiving Stolen Property—Precious Metal Dealers—Elements
CRIMJIG 16.52	Financial Transaction Card Fraud—Obtaining Property of Another—Elements
CRIMJIG 16.60	Financial Transaction Card Fraud—Provider Fraud—Elements
CRIMJIG 16.64	Financial Transaction Card Fraud—False Theft Report—Elements
CRIMJIG 16.67	Financial Transaction Card Fraud—Value
CRIMJIG 16.69	Wrongfully Obtaining Public Assistance—Elements
CRIMJIG 16.71	Insurance Fraud—Elements
CRIMJIG 16.75	Fraud of Hotel or Restaurant Owner (Defrauding an Innkeeper)—Elements
CRIMJIG 16.82	Value
CRIMJIG 16.83	Aggregation of Values
CRIMJIG 16.99	Residential Mortgage Fraud—Elements
CRIMJIG 16.104	Financial Transaction Card Fraud—Trafficking of snap benefits—Defined <i>[New]</i>
CRIMJIG 16.105	Financial Transaction Card Fraud—Trafficking of snap benefits—Elements <i>[New]</i>

Volume 10A

CHAPTER 17. BURGLARY

CRIMJIG 17.02	Burglary in the First Degree—Occupied Dwelling— Elements
CRIMJIG 17.03	Burglary in the First Degree—Weapon—Elements
CRIMJIG 17.04	Burglary in the First Degree—Assault—Elements
CRIMJIG 17.06	Burglary in the Second Degree—Dwelling— Elements
CRIMJIG 17.07	Burglary in the Second Degree—Bank—Elements
CRIMJIG 17.08	Burglary in the Second Degree—Controlled Substances Stored—Elements
CRIMJIG 17.09	Burglary in the Second Degree—Tool—Elements
CRIMJIG 17.11	Burglary in the Third Degree—Elements
CRIMJIG 17.13	Burglary in the Fourth Degree—Elements

MINNESOTA JURY INSTRUCTION GUIDES

- CRIMJIG 17.31 Surreptitious Intrusion—House or Dwelling Place—
Defined *[Retitled]*
- CRIMJIG 17.32 Surreptitious Intrusion—House or Dwelling Place—
Elements *[Retitled]*
- CRIMJIG 17.33 Surreptitious Intrusion—Expectation of Privacy—
Defined
- CRIMJIG 17.34 Surreptitious Intrusion—Expectation of Privacy—
Elements
- CRIMJIG 17.42 Surreptitious Intrusion—With Sexual Intent
Regarding a Minor—Defined *[New]*
- CRIMJIG 17.43 Surreptitious Intrusion by Device—With Sexual
Intent Regarding a Minor—Elements *[New]*

CHAPTER 18. ARSON, AND OTHER CRIMES OF DESTRUCTION OF PROPERTY

- CRIMJIG 18.02 Arson in the First Degree—Dwelling—Elements
- CRIMJIG 18.04 Arson in the First Degree—Buildings Other Than
Dwellings—Elements
- CRIMJIG 18.06 Arson in the First Degree—Flammable or
Combustible Liquids—Elements
- CRIMJIG 18.08 Arson in the Second Degree—Elements
- CRIMJIG 18.10 Arson in the Third Degree—Elements
- CRIMJIG 18.12 Arson in the Fourth Degree—Elements
- CRIMJIG 18.14 Arson in the Fifth Degree—Elements
- CRIMJIG 18.27 Criminal Damage to Property—First Degree—
Defined
- CRIMJIG 18.28 Criminal Damage to Property—First Degree—
Elements *[Retitled]*
- CRIMJIG 18.29 Criminal Damage to Property—Second Degree and
Third Degree—Defined
- CRIMJIG 18.30 Criminal Damage to Property—Second Degree and
Third Degree—Elements
- CRIMJIG 18.45 Criminal Damage to Property—Fourth Degree—
Defined *[New]*
- CRIMJIG 18.46 Criminal Damage to Property—Fourth Degree—
Elements *[New]*

C. DRUG CRIMES

CHAPTER 20. DRUG CRIMES

- CRIMJIG 20.01 Controlled Substance Crime in the First Degree—
Sale—Defined
- CRIMJIG 20.02 Controlled Substance Crime in the First Degree—
Sale—Elements
- CRIMJIG 20.03 Controlled Substance Crime in the First Degree—
Possession—Defined
- CRIMJIG 20.04 Controlled Substance Crime in the First Degree—
Possession—Elements

TABLE OF CONTENTS

CRIMJIG 20.07	Controlled Substance Crime in the Second Degree— Sale—Defined
CRIMJIG 20.08	Controlled Substance Crime in the Second Degree— Sale—Elements
CRIMJIG 20.12	Controlled Substance Crime in the Second Degree— Sale/Schools/Parks/Public Housing/Drug Treatment Facility—Elements
CRIMJIG 20.13	Controlled Substance Crime in Second Degree— Possession—Defined
CRIMJIG 20.14	Controlled Substance Crime in the Second Degree— Possession—Elements
CRIMJIG 20.15	Controlled Substance Crime in the Third Degree— Sale—Defined
CRIMJIG 20.19	Controlled Substance Crime in the Third Degree— Possession—Defined
CRIMJIG 20.20	Controlled Substance Crime in the Third Degree— Possession—Elements
CRIMJIG 20.22	Controlled Substance Crime in the Third Degree— Possession in School/Park/Public Housing Zone/ Drug Treatment Facility—Elements
CRIMJIG 20.27	Controlled Substance Crime in the Fourth Degree— Sale—School/Park/Public Housing Zone/Drug Treatment Facility—Defined
CRIMJIG 20.28	Controlled Substance Crime in the Fourth Degree— Sale—School/Park/Public Housing Zone—Elements
CRIMJIG 20.32	Controlled Substance Crime in the Fourth Degree— Possession—Elements
CRIMJIG 20.33	Controlled Substance Crime in the Fifth Degree— Sale—Marijuana or Schedule Iv—Defined
CRIMJIG 20.34	Controlled Substance Crime in the Fifth Degree— Sale—Marijuane or Schedule IV—Elements
CRIMJIG 20.35	Controlled Substance Crime in the Fifth Degree— Possession—Defined
CRIMJIG 20.36	Controlled Substance Crime in the Fifth Degree— Possession—Elements
CRIMJIG 20.42	Other Controlled Substance Offense Including Salvia Divinorum and Synthetic Cannabinoids— Possession—Elements
CRIMJIG 20.44	Possession of a Small Amount of Marijuana in a Motor Vehicle—Elements
CRIMJIG 20.46	(Delivery) (Possession for Delivery) (Manufacture for Delivery) of Drug Paraphernalia—Elements
CRIMJIG 20.61	Great Bodily Harm Caused by Distribution of Drugs—Defined
CRIMJIG 20.62	Great Bodily Harm Caused by Distribution of Drugs—Elements
CRIMJIG 20.64	Controlled Substance Crime—Methamphetamine Manufacturer—Possession of Precursors— Elements

MINNESOTA JURY INSTRUCTION GUIDES

D. CRIMES AGAINST THE GOVERNMENT AND THE ADMINISTRATION OF JUSTICE

CHAPTER 22. PERJURY

- CRIMJIG 22.02 Perjury—Action, Hearing, or Proceeding—Elements
CRIMJIG 22.13 False Statement to a Peace Officer—Defined
CRIMJIG 22.14 False Statement to a Peace Officer—Elements

E. OTHER CRIMES

CHAPTER 28. GAME AND FISH VIOLATIONS

- CRIMJIG 28.11 Taking Wild Animals While under the Influence—Defined
CRIMJIG 28.12 Taking Wild Animals While under the Influence—Elements

CHAPTER 29. TRAFFIC

- CRIMJIG 29.07 Driving While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Defined [Retitled]
CRIMJIG 29.08 Driving While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Elements [Retitled]
CRIMJIG 29.13 Driving While under the Influence of an Intoxicating Substance—Defined [Retitled]
CRIMJIG 29.14 Driving While under the Influence of an Intoxicating Substance—Elements [Retitled]
CRIMJIG 29.15 Driving with an Alcohol Concentration of 0.08 or More as Measured Within Two Hours of the Time of Driving—Affirmative Defense
CRIMJIG 29.20 Driving under the Influence—Aggravating Factors
CRIMJIG 29.21 Refusal to Submit to Testing—Defined
CRIMJIG 29.22 Refusal to Submit to Testing—Elements
CRIMJIG 29.25 Reckless Driving—Defined
CRIMJIG 29.26 Reckless Driving—Elements
CRIMJIG 29.39 Failure to Stop and Give Information—Attended Vehicle—No Personal Injury—Defined
CRIMJIG 29.40 Failure to Stop and Give Information—Attended Vehicle—No Personal Injury—Elements
CRIMJIG 29.43 Failure to Stop and Give Information—Unattended Vehicle—Defined
CRIMJIG 29.44 Failure to Stop and Give Information—Unattended Vehicle—Elements
CRIMJIG 29.57 Failure to Yield—Pedestrians—Absence of Signals—Defined
CRIMJIG 29.58 Failure to Yield—Pedestrians—Absence of Signals—Elements

TABLE OF CONTENTS.

CRIMJIG 29.63	Operating Aircraft While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.64	Operating Aircraft While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or a Hazardous Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.70	Operating Aircraft While under the Influence of an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.71	Operating Aircraft While under the Influence of an Intoxicating Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.84	Operating a Snowmobile/All-Terrain Vehicle While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.85	Operating a Snowmobile/All-Terrain Vehicle While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.90	Operating a Snowmobile/All-Terrain Vehicle While under the Influence of an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.91	Operating a Snowmobile/All-Terrain Vehicle While under the Influence of an Intoxicating Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.96	Operating a Motorboat While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.97	Operating a Motorboat While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.102	Operating a Motorboat While under the Influence of an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.103	Operating a Motorboat While under the Influence of an Intoxicating Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.110	Operating an Off-Highway Motorcycle/Off-Road Vehicle While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Defined <i>[Retitled]</i>
CRIMJIG 29.111	Operating an Off-Highway Motorcycle/Off-Road Vehicle While under the Influence of a Combination of Alcohol and/or a Controlled Substance and/or an Intoxicating Substance—Elements <i>[Retitled]</i>
CRIMJIG 29.116	Operating an Off-Highway Motorcycle/Off-Road Vehicle While under the Influence of an Intoxicating Substance—Defined <i>[Retitled]</i>

MINNESOTA JURY INSTRUCTION GUIDES

- CRIMJIG 29.117 Operating an Off-Highway Motorcycle/Off-Road Vehicle While under the Influence of an Intoxicating Substance—Elements [*Retitled*]
- CRIMJIG 29.124 Overtaking and Passing a Vehicle Stopped at a Crosswalk to Permit a Pedestrian to Cross a Roadway—Defined [*New*]
- CRIMJIG 29.125 Overtaking and Passing a Vehicle Stopped at a Crosswalk to Permit a Pedestrian to Cross a Roadway—Elements [*New*]

CHAPTER 32. WEAPONS CRIMES

- CRIMJIG 32.02 Use/Possession of Dangerous Weapon—Elements
- CRIMJIG 32.04 Drive-by Shooting—Elements
- CRIMJIG 32.06 Shooting at Transit Vehicle or Facility—Elements
- CRIMJIG 32.08 Intentional Discharge of a Firearm—Elements
- CRIMJIG 32.10 Reckless Discharge of a Firearm Within a Municipality—Elements
- CRIMJIG 32.12 Failure to Render Aid From Firearm Injury—Elements
- CRIMJIG 32.14 Failure to Render Aid From Firearm Injury—Witness to—Elements
- CRIMJIG 32.16 Ineligible Person in Possession of (a Firearm) (Ammunition)—Defined [*Retitled*]
- CRIMJIG 32.17 Ineligible Person in Possession of (a Firearm) (Ammunition)—Elements [*Retitled*]
- CRIMJIG 32.19 Possession of a Pistol or Semi-Automatic Military-Style Assault Weapon by Charged Individual—Elements
- CRIMJIG 32.20 Possession of (Firearm) (Pistol) (Semi-Automatic Military-Style Assault Weapon) (Ammunition) by an Ineligible Person—Defined [*Retitled*]
- CRIMJIG 32.21 Possession of (Firearm) (Pistol) (Semi-Automatic Military-Style Assault Weapon) (Ammunition) by an Ineligible Person—Elements [*Retitled*]
- CRIMJIG 32.24 Sale/Possession of a Firearm Silencer—Defined
- CRIMJIG 32.25 Sale/Possession of a Firearm Silencer—Elements
- CRIMJIG 32.27 Furnishing Firearms to Minors—Elements
- CRIMJIG 32.36 Possession of a Pistol Without a Permit—Defined
- CRIMJIG 32.37 Possession of a Pistol Without a Permit—Elements
- CRIMJIG 32.41 Firearm Serial Number Removed—Elements
- CRIMJIG 32.45 Carrying a Pistol in a Public Place While (Under the Influence of a Controlled Substance) (Under the Influence of Alcohol)(Has a Blood Alcohol Concentration of 0.10 or More)(Has a Blood Alcohol Concentration of Less Than 0.10 But More Than 0.04)—Defined
- CRIMJIG 32.46 Carrying a Pistol in a Public Place While (Under the Influence of a Controlled Substance) (Under the

TABLE OF CONTENTS

Influence of Alcohol)(Has a Blood Alcohol
Concentration of 0.10 or More)(Has a Blood Alcohol
Concentration of Less Than 0.10 But More Than
0.04)—Elements

Table of Laws and Rules

Table of Cases

Index

PART II. SPECIFIC CRIMES

B. PROPERTY CRIMES

CHAPTER 17

BURGLARY

CRIMJIG 17.02

BURGLARY IN THE FIRST DEGREE—OCCUPIED DWELLING—ELEMENTS

n. 1.

Replace Footnote one with the following text:

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.03**BURGLARY IN THE FIRST DEGREE—WEAPON—
ELEMENTS**

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant (entered a building without the consent of the person in lawful possession) (entered a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession) (remained within a building without consent of the person in lawful possession). [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether the person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

“Building” means a structure suitable for affording shelter for human beings including any appurtenant or connected structure.¹

A person is in lawful possession when the person owns the building or has been given the right to control or occupy the building by the owner. Such a person may be in lawful possession of the building, although the person is not physically present at the time of the entry.²

[1] Second, the defendant possessed a dangerous weapon or an explosive when entering or at any time while in the building.³

“A dangerous weapon” means any firearm, whether loaded or unloaded, or any device designed as a

weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.⁴

“Great bodily harm” means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.⁵

[2] **Second**, the defendant possessed an article used or fashioned in a manner to lead (another person) (_____) to reasonably believe it to be a dangerous weapon when entering or at any time while in the building.

“A dangerous weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.⁶

“Great bodily harm” means bodily harm that creates a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.⁷

Third, (the alleged victim) (_____) was physically present at any time while the defendant was in the building.⁸

[1] **(Third) (Fourth)**, the defendant entered or remained in the building with the intent to commit [Insert name of intended crime alleged].

The elements of _____ are:

[INSERT elements of the intended crime without date or venue.]

It is not necessary that the intended crime was actually completed or attempted, but it is necessary that the defendant had the intent to commit that crime at the time the defendant entered or remained in the building. Whether the defendant intended to commit the crime must be determined from all the circumstances, including the manner and time of entry or remaining in the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] (Third) (Fourth), the defendant committed the crime of _____ [Insert name of crime alleged] while in the building.

The elements of _____ are:

[INSERT elements of the alleged crime without date or venue.]

(Fourth) (Fifth), the defendant's act took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.582, subd. 1(b).

¹Minn. Stat. § 609.581, subd. 2. See also *State v. Lopez*, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest committed a burglary when he entered another guest's room without consent and committed a theft in that room).

²Lawful possession defined, see CRIMJIGs 17.15, 17.16. Note that an

owner can divest himself or herself of the right to lawful possession of the building through an agreement with a co-owner. *State v. Spence*, 768 N.W.2d 104 (Minn. 2009).

³The statute does not impose an additional *mens rea* requirement with respect to the element of possession of a dangerous weapon, i.e., the state

need not prove the defendant *knowingly* possessed a dangerous weapon. See *State v. Garcia-Gutierrez*, 844 N.W.2d 519, 522 (Minn. 2014).

⁴Minn. Stat. § 609.02, subd. 6.

⁵Minn. Stat. § 609.02, subd. 8.

⁶Minn. Stat. § 609.02, subd. 6.

⁷Minn. Stat. § 609.02, subd. 8.

⁸This element is required when the state alleges the defendant possessed an “article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon.” See *State v. Rogers*, 925 N.W.2d 1, 4 (Minn. 2019).

CRIMJIG 17.04**BURGLARY IN THE FIRST DEGREE—ASSAULT—
ELEMENTS****n. 1.***Replace Footnote one with the following text:*

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.06**BURGLARY IN THE SECOND DEGREE—
DWELLING—ELEMENTS***n. 1.**Replace Footnote one with the following text:*

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

COMMENT*Add the following text as the second paragraph of the Comment:*

In *State v. Rodriguez*, 863 N.W.2d 424 (Minn. App. 2015) the Court of Appeals held that when the predicate offense for second-degree burglary is criminal damage to property, the entry of any part of the offender’s body into the premises satisfies the statutory requirement that the offender committed a crime while in the building. *See also Munger v. State*, 749 N.W.2d 335 (Minn. 2008).

CRIMJIG 17.07**BURGLARY IN THE SECOND DEGREE—BANK—
ELEMENTS**

n. 1.

Replace Footnote one with the following text:

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.08**BURGLARY IN THE SECOND DEGREE—
CONTROLLED SUBSTANCES STORED—ELEMENTS**

n. 1.

Replace Footnote one with the following text:

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.09**BURGLARY IN THE SECOND DEGREE—TOOL—
ELEMENTS**

n. 1.

Replace Footnote one with the following text:

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.11**BURGLARY IN THE THIRD DEGREE—ELEMENTS***n. 1.**Replace Footnote one with the following text:*

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.13**BURGLARY IN THE FOURTH DEGREE—ELEMENTS***n. 1.**Replace Footnote one with the following text:*

A “building” is a structure suitable for affording shelter for human beings, including any adjacent, appurtenant, or connected structure. Minn. Stat. § 609.581, subds. 2 and 3. *See also*

State v. Lopez, 908 N.W.2d 334 (Minn. 2018) (holding a hotel guest commits a burglary when he or she enters another guest’s room without consent and commits a theft in that room).

CRIMJIG 17.31**SURREPTITIOUS INTRUSION—HOUSE OR DWELLING PLACE—DEFINED [Retitled]**

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, with intent to intrude upon or interfere with the privacy of a member of the household, enters upon another's property and

- [1] surreptitiously gazes, stares, or peeps in the window or any other aperture of the house or dwelling place of another**
- [2] surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of the house or dwelling place of another**

is guilty of a crime.

COMMENT

Minn. Stat. § 609.746, subd. 1(a), (b), (e).

CRIMJIG 17.32**SURREPTITIOUS INTRUSION—HOUSE OR DWELLING PLACE—ELEMENTS [Retitled]**

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

First, the defendant entered upon the property of (——) (another person).

[1] Second, the defendant surreptitiously gazed, stared, or peeped in the window or any other aperture¹ of the house or dwelling place of (——) (another person).

[2] Second, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture² of the house or dwelling place of (——) (another person).

Third, the defendant (gazed, stared, or peeped) (installed the device) with intent to intrude upon or interfere with the privacy of a member of the household³ of (——) (another person).

“With intent to” means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, would cause that result.⁴

[Fourth, the defendant’s act was against a person under the age of 18.]

[Fifth, the defendant knew or had reason to know a person under the age of 18 was present.

“To know” requires only that the defendant believed that a person under the age of 18 was present.^{5]}

(Fourth)(Sixth), the defendant's act took place on (or about) —, in — County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Has the defendant previously been convicted of the crime of —? ⁶ If you find the fact has been proven beyond a reasonable doubt, you should answer "yes." If you find the fact has not been proven beyond a reasonable doubt, you should answer "no."]⁷

COMMENT

Minn. Stat. § 609.746, subd. 1(a), (b), (e).

¹"Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. See *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

²"Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. See *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

³The statute does not define "member of the household." In the absence of statutory inclusion by reference or governing case law, the committee does not recommend using the definition of a similar statutory phrase found in chapter 518B. The chapter 518B definition is likely overbroad because it includes persons who do not currently live in the household. See

Minn. Stat. § 518B.01, subd. 2(b).

⁴Minn. Stat. § 609.02, subd. 9(4).

⁵See Minn. Stat. § 609.02, subd. 9(2).

⁶A violation of Minn. Stat. § 609.746 or 609.749.

⁷The special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

CRIMJIG 17.33**SURREPTITIOUS INTRUSION—EXPECTATION OF
PRIVACY—DEFINED**

Replace the current Jury Instruction and Comments with the following text and Comments:

Under Minnesota law, whoever, with intent to intrude upon or interfere with the privacy of the occupant,

- [1] surreptitiously gazes, stares, or peeps in the window or any other aperture of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts)**
- [2] surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts)**

is guilty of a crime.

COMMENT

Minn. Stat. § 609.746, subd. 1(c), (d), (e).

CRIMJIG 17.34**SURREPTITIOUS INTRUSION—EXPECTATION OF
PRIVACY—ELEMENTS**

Replace the current Jury Instruction and Comments with the following text and Comments:

The elements of this crime are:

[1] First, the defendant surreptitiously gazed, stared, or peeped in the window or any other aperture¹ of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

["Hotel" means a hotel, motel, resort, boarding house, bed and breakfast, furnished apartment house or other building, which is kept, used, or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy.]²

["Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.]³

[2] First, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture⁴ of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

["Hotel" means a hotel, motel, resort, boarding house, bed and breakfast, furnished apartment house or other building, which is kept, used, or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy.]⁵

[Intimate parts includes the primary genital area, groin, inner thigh, buttocks, or breast].⁶

Second, the defendant acted with intent to intrude upon or interfere with the privacy of (____) (the occupant).

“With intent to” means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, would cause that result.⁷

[Third, the defendant’s act was against a person under the age of 18.]

[Fourth, the defendant knew or had reason to know a person under the age of 18 was present.

“To know” requires only that the defendant believed that a person under the age of 18 was present.⁸

(Third)(Fifth), the defendant’s act took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[If you find the defendant guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Has the defendant previously been convicted of the crime of _____?⁹ If you find the fact has been proven beyond a reasonable doubt, you should answer “yes.” If you find the fact has not been proven beyond a reasonable doubt, you should answer “no.”]¹⁰

COMMENT

Minn. Stat. § 609.746. subd. 1(c), (d), (e).

¹“Aperture” has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. See *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006) (gazing over partition in public restroom).

²Minn. Stat. § 327.70, subd. 3.

³Minn. Stat. § 609.341, subd. 5.

⁴“Aperture” is a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006) (gazing over partition in public restroom).

⁵Minn. Stat. § 327.70, subd. 3.

⁶Minn. Stat. § 609.341, subd. 5.

⁷Minn. Stat. § 609.02, subd. 9(4).

⁸See Minn. Stat. § 609.02, subd. 9(2).

⁹A violation of Minn. Stat. § 609.746 or 609.749.

¹⁰The special interrogatory should be used only if the defendant is charged with an offense enhanced by prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant’s waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and the special interrogatory should not be used.

CRIMJIG 17.42**SURREPTITIOUS INTRUSION—WITH SEXUAL
INTENT REGARDING A MINOR—DEFINED [New]**

Under Minnesota law,

- [1] a person more than 36 months older than the minor, who, with sexual intent to intrude upon or interfere with the privacy of a minor member of the household, and who knows or has reason to know the minor is present, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of the house or dwelling place of another
- [2] a person more than 36 months older than the minor, who, with sexual intent to intrude upon or interfere with the privacy of a minor, and who knows or has reason to know the minor is present, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts

is guilty of a crime.

COMMENT

Minn. Stat. § 609.746, subd. 1(f).

CRIMJIG 17.43**SURREPTITIOUS INTRUSION BY DEVICE—WITH
SEXUAL INTENT REGARDING A MINOR—
ELEMENTS [New]**

The elements of this crime are:

[1] First, the defendant entered upon the property of (——) (another person).

Second, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture¹ of the house or dwelling place of (——) (another person).

[2] First, the defendant surreptitiously installed or used any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture² of (a sleeping room in a hotel) (a tanning booth) (a place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose his or her intimate parts or the clothing covering the immediate area of the intimate parts).

["Hotel" means a hotel, motel, resort, boarding house, bed and breakfast, furnished apartment house or other building, which is kept, used, or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy.]³

["Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast.]⁴

(Second) (Third), the defendant installed or used the device with intent to intrude upon or interfere with the privacy of (a member of the household⁵ of (——) (another person)) ((——) (the occupant)).

"With intent to" means that the actor either had a

purpose to do the thing or cause the result specified, or believed that the act, if successful, would cause that result.⁶

(Third) (Fourth), the defendant's act was against a person under the age of 18.

(Fourth) (Fifth), the defendant knew or had reason to know a person under the age of 18 was present.

"To know" requires only that the defendant believed that a person under the age of 18 was present.

(Fifth) (Sixth), the defendant is more than 36 months older than the person under the age of 18.

(Sixth) (Seventh), the defendant acted with sexual intent.

(Seventh) (Eighth), the defendant's act took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.746, subd. 1(f).

¹"Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. See *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

²"Aperture" has been defined as a space through which an offender obtains a view into a place where a reasonable person has an expectation of privacy. See *State v. Ulmer*, 719 N.W.2d 213 (Minn. Ct. App. 2006).

³Minn. Stat. § 327.70, subd. 3.

⁴Minn. Stat. § 609.341, subd. 5.

⁵The statute does not define "member of the household." In the absence of statutory inclusion by reference or governing case law, the committee does not recommend using the definition of a similar statutory phrase found in chapter 518B. The chapter 518B definition is likely overbroad because it includes persons who do not currently live in the household. See Minn. Stat. § 518B.01, subd. 2(b).

⁶Minn. Stat. § 609.02, subd. 9(4).

CHAPTER 18

ARSON, AND OTHER CRIMES OF DESTRUCTION OF PROPERTY

CRIMJIG 18.02

ARSON IN THE FIRST DEGREE—DWELLING— ELEMENTS

Please delete the parenthetical “(or another for whose act the defendant is liable)” from the elements in this section.

CRIMJIG 18.04**ARSON IN THE FIRST DEGREE—BUILDINGS
OTHER THAN DWELLINGS—ELEMENTS**

Please delete the parenthetical “(or another for whose act the defendant is liable)” from the elements in this section.

CRIMJIG 18.06

ARSON IN THE FIRST DEGREE—FLAMMABLE OR COMBUSTIBLE LIQUIDS—ELEMENTS

Please delete the parenthetical “(or another for whose act the defendant is liable)” from the elements in this section.

CRIMJIG 18.08

ARSON IN THE SECOND DEGREE—ELEMENTS

Please delete the parenthetical “(or another for whose act the defendant is liable)” from the elements in this section.

CRIMJIG 18.10**ARSON IN THE THIRD DEGREE—ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant unlawfully¹ and intentionally destroyed or damaged any real or personal property by (fire) (or) (explosive). It is not necessary that the property was destroyed or seriously damaged. It is enough if there was damage to the property or any part of it.

“Intentionally” means that the defendant either has a purpose to do the thing or cause the result specified, or believes that the act performed by the defendant, if successful, will cause the result. In addition, the defendant must have knowledge of those facts that are necessary to make the defendant’s conduct criminal and that are set forth after the word “intentionally.”²

[“Explosive” means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless the compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term does not mean or include black powder, smokeless powder, primers, and fuses when used for antique or replica muzzle-loading rifles, pistols, muskets, shotguns, and cannons or when possessed or used for rifle, pistol, and shotgun ammunition, nor does it include fireworks].³

[1] Second, the property destroyed or damaged by the defendant’s act had a value of \$300 or more.

Third, such destruction or damage was a reasonably foreseeable consequence of defendant’s act.

[2] Second, the property intended by the defendant to be destroyed or damaged had a value of more than \$300.

(Third) (Fourth), the defendant's act took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.563.

¹The trial judge may be required to instruct the jury as to unlawfulness based on case-specific facts.

³See Minn. Stat. § 299F.72, subd. 2; see also Minn. Stat. § 624.20 for further definition of "fireworks" if appropriate.

²Minn. Stat. § 609.02, subd. 9(3).

CRIMJIG 18.12

ARSON IN THE FOURTH DEGREE—ELEMENTS

Please delete the parenthetical “(or another for whose act the defendant is liable)” from the elements in this section.

CRIMJIG 18.14

ARSON IN THE FIFTH DEGREE—ELEMENTS

Please delete the parenthetical “(or another for whose act the defendant is liable)” from the elements in this section.

CRIMJIG 18.27**CRIMINAL DAMAGE TO PROPERTY—FIRST
DEGREE—DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent is guilty of a crime.

COMMENT

Minn. Stat. § 609.595, subd. 1.

CRIMJIG 18.28**CRIMINAL DAMAGE TO PROPERTY—FIRST
DEGREE—ELEMENTS [Retitled]**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant intentionally caused damage to ____.

“Intentionally” means that the defendant either has a purpose to do the thing or cause the result specified or believes that the act performed by the defendant, if successful, will cause that result. In addition, the defendant must have knowledge of those facts which are necessary to make the defendant’s conduct criminal and which are set forth after the word “intentionally.”¹

[“Damage” includes tampering with a public safety motor vehicle and acts that obstruct or interfere with the vehicle’s use.]

Second, the ____ was the property of (____) (another person).

Third, (____) (the other person) did not consent to the damaging of the property.

[1] Fourth, the damage to ____ created a reasonably foreseeable risk of bodily harm.

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.² It is not necessary that bodily harm resulted, only that a reasonably foreseeable risk of such harm was created.

[2] Fourth, the vehicle was a public safety motor vehicle.

“Public safety motor vehicle” includes ____.³

Fifth, the defendant knew the vehicle was a public safety motor vehicle.

“To know” requires only that the defendant believes that the specified fact exists.⁴

Sixth, the damage to the vehicle caused a (substantial interruption or impairment of public service) (reasonably foreseeable risk of bodily harm).

[“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.⁵ It is not necessary that bodily harm resulted, only that a reasonably foreseeable risk of such harm was created.]

[3] Fourth, ____ belonged to a (public utility) (common carrier).

Fifth, the damage impaired ____’s service to the public.

[4] Fourth, the damage reduced the value of the property by more than \$1,000 as measured by the cost of repair and replacement.

[5] Fourth, the damage reduced the value of the property by more than \$500 as measured by the cost of repair and replacement.

Fifth, the defendant has been convicted within the preceding three years of a violation of Minn. Stat. § 609.595, subd. 1 or 2.⁶

(Fifth) (Sixth) (Seventh), the defendant’s act(s) took place on (or about) ____, [and at least one incident of damage took place]⁷ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.595, subd. 1.

¹Minn. Stat. § 609.02, subd. 9(3).

²Minn. Stat. § 609.02, subd. 7.

³See Minn. Stat. § 609.595, subd. 4, for a list of "public safety motor vehicles" to which the statute applies.

⁴Minn. Stat. § 609.02, subd. 9(2).

⁵Minn. Stat. § 609.02, subd. 7.

⁶The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351

N.W.2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant's waiver must be made personally and on the record. If the defendant has stipulated to the prior conviction, that information should not be presented to the jury, and this element should not be included.

⁷See Minn. Stat. § 609.595, subd. 1 (aggregation provision).

CRIMJIG 18.29**CRIMINAL DAMAGE TO PROPERTY—SECOND
DEGREE AND THIRD DEGREE—DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent [and does so because of the property owner's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin)] is guilty of a crime.

COMMENT

Minn. Stat. § 609.595, subds. 1a, 2.

CRIMJIG 18.30**CRIMINAL DAMAGE TO PROPERTY—SECOND DEGREE AND THIRD DEGREE—ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant intentionally caused damage to

“Intentionally” means that the defendant either has a purpose to do the thing or cause the result specified or believes that the act performed by the defendant, if successful, will cause that result. In addition, the defendant must have knowledge of those facts which are necessary to make the defendant’s conduct criminal and which are set forth after the word “intentionally.”¹

[“Damage” includes tampering with a public safety motor vehicle and acts that obstruct or interfere with the vehicle’s use.]

Second, the _____ was the property of (_____) (another person).

Third, (____) (the other person) did not consent to the damaging of the property.

[1] Fourth, the defendant caused the damage because of the property owner’s or another’s actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).

[“Disability” means any condition or characteristic that renders a person a disabled person. A “disabled person” is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.]²

[2] Fourth, the damage reduced the value of the property by more than \$500 as measured by the cost of repair and replacement.

[Fifth, the defendant caused the damage because of the property owner's or another's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).]

["Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.]³

[3] Fourth, the vehicle was a public safety motor vehicle.

"Public safety motor vehicle" includes _____.⁴

Fifth, the defendant knew the vehicle was a public safety motor vehicle.

"To know" requires only that the defendant believes that the specified fact exists.⁵

[Sixth, the defendant caused the damage because of the property owner's or another's actual or perceived (race) (color) (religion) (sex) (sexual orientation) (disability) (age) (national origin).]

["Disability" means any condition or characteristic that renders a person a disabled person. A "disabled person" is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.]⁶

(Fifth) (Sixth) (Seventh), the defendant's act(s) took place on (or about) —, [and at one incident of damage took place]⁷ in — County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.595, subds. 1a, 2.

¹Minn. Stat. § 609.595, subds. 1a, 2.

²Minn. Stat. § 363A.03, subd. 12.

³Minn. Stat. § 363A.03, subd. 12.

⁴See Minn. Stat. § 609.595, subd. 4, for a list of "public safety motor

vehicles" to which the statute applies.

⁵Minn. Stat. § 609.02, subd. 9(2).

⁶Minn. Stat. § 363A.03, subd. 12.

⁷See Minn. Stat. § 609.595, subds. 1a(b), 2(c) (aggregation provisions).

CRIMJIG 18.45**CRIMINAL DAMAGE TO PROPERTY—FOURTH
DEGREE—DEFINED [New]**

Under Minnesota law, whoever intentionally causes damage to physical property of another without the other's consent is guilty of a crime.

COMMENT

Minn. Stat. § 609.595, subd. 3.

CRIMJIG 18.46**CRIMINAL DAMAGE TO PROPERTY—FOURTH
DEGREE—ELEMENTS [New]**

The elements of this crime are:

First, the defendant intentionally caused damage to _____.

“Intentionally” means that the defendant either has a purpose to do the thing or cause the result specified or believes that the act performed by the defendant, if successful, will cause that result. In addition, the defendant must have knowledge of those facts which are necessary to make the defendant’s conduct criminal and which are set forth after the word “intentionally.”¹

Second, the _____ was the property of (_____) (another person).

Third, (____) (the other person) did not consent to the damaging of the property.

Fourth, the defendant’s act took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.595, subd. 3.

¹Minn. Stat. § 609.02, subd. 9(3).

C. DRUG CRIMES

CHAPTER 20

DRUG CRIMES

CRIMJIG 20.01

CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—SALE—DEFINED

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever, on one or more occasions within a ninety-day period, unlawfully sells

[1] one or more mixtures of a total weight of seventeen grams or more containing (cocaine) (methamphetamine),

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [choose one:]

[A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished) (displayed) (threatened a person with) (otherwise employed) a firearm]

[B] the offense involves [at least two of the following aggravating factors:] [the following two aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of _____¹ [; and]

- [2] the offense was committed for the benefit of a criminal gang [; and]
- [3] the offense involved separate acts of sale or possession of (cocaine)(methamphetamine) in three or more counties [; and]
- [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state) (international) border and into Minnesota [; and]
- [5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]
- [6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]
- [7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]
- [8] the offense involved the sale of (cocaine) (methamphetamine) to (a person under the age of eighteen)(a vulnerable adult) [; and]
- [9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]
- [10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than ten grams.

- [3] one or more mixtures of a total weight of ten grams or more containing heroin
- [4] one or more mixtures of a total weight of fifty grams or more containing _____²
- [5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine) (hallucinogen)
- [6] two hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen)
- [7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols)

is guilty of a crime.

¹List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).

caine, heroin, or methamphetamine as charged in the complaint.

²A narcotic drug other than co-

CRIMJIG 20.02**CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—SALE—ELEMENTS**

Replace the current Jury Instruction with the following text and Footnotes:

The elements of a controlled substance violation in the first degree are:

First, the defendant, on one or more occasions within a ninety-day period, sold

[1] one or more mixtures of a total weight of seventeen grams or more containing (cocaine) (methamphetamine).

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [choose one:]

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]. [refer to and add CRIMJIG 2.09 for definition of accomplice][A “firearm” means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.]¹

[B] the offense involved [at least two of the following aggravating factors:] [the following two aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of _____²[; and]

[2] the offense was committed for the benefit of a criminal gang. A “criminal gang” means any

ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the crimes of _____³, has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

- [3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: _____, _____, and _____, counties [; and]
- [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]
- [5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]
- [6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]
- [7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]
- [8] the offense involved the sale of (cocaine) (methamphetamine) to _____,

who is [under the age of eighteen] [a vulnerable adult] [A “vulnerable adult” is a person who is 18 years of age or older who (is a resident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person’s ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person’s ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)] [; and]

- [9] the defendant or an accomplice (manufactured)(possessed)(sold) (cocaine)(metham-

phetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A “school zone” is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school⁴ where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A “correctional facility” means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.⁵] [A “drug treatment facility” means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and].

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than ten grams.[refer to and add CRIMJIG 2.09 for definition of accomplice].

[3] one or more mixtures of a total weight of ten grams or more containing heroin.

[4] one or more mixtures of a total weight of fifty grams or more containing _____.⁶

[5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine) (hallucinogen).

[6] two hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).

[7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols).

“To sell” means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, or to offer or agree to do the same, or possess with intent to do the same, or to manufacture. [“To manufacture” means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, and their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.⁷

Second, defendant knew or believed that the substance sold was a controlled substance.⁸

Third, the defendant's sale of _____ was without lawful authority.

Fourth, one or more sales took place on (or about) _____ in _____ County.⁹

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹See M.S.A. § 609.666, subd. 1.

²List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).

³List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. See M.S.A. § 609.229, subd. 1(1).

⁴See Minn. Stat. § 123B.41, subd. 9 for the definition of a "nonpublic school."

⁵"Correctional facility" is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A. § 241.021, subd. 1(f).

⁶A narcotic drug other than cocaine, heroin, or methamphetamine as charged in the complaint.

⁷Note the exceptions listed under M.S.A. § 152.021, subd. 2(b); 152.022, subd. 2(b); and 152.023, subd. 2(b).

⁸The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

⁹See M.S.A. 152.021, subd. 3(c).

CRIMJIG 20.03**CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—POSSESSION—DEFINED**

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever unlawfully possesses

- [1] one or more mixtures of a total weight of fifty grams or more containing (cocaine) (methamphetamine),**
- [2] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine) and [choose one]**
 - [A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]**
 - [B] the offense involves [at least two of the following aggravating factors:] [the following two aggravating factors:]**
 - [1] the defendant, within the previous ten years, has been convicted of _____,¹ [; and]**
 - [2] the offense was committed for the benefit of a criminal gang [; and]**
 - [3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties [; and]**
 - [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]**
 - [5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine)**

amine) (was)(were) (sold)(transferred)(pos-
sessed with intent to (sell) (transfer)) [; and]

- [6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]
 - [7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]
 - [8] the offense involved the sale of (cocaine) (methamphetamine) to _____, who [is under the age of eighteen] [is a vulnerable adult] [; and]
 - [9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]
 - [10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than twenty-five grams.
- [3] one or more mixtures of a total weight of twenty-five grams or more containing heroin
 - [4] one or more mixtures of a total weight of five hundred grams or more containing _____²
 - [5] one or more mixtures of a total weight of five hundred grams or more containing (amphetamine) (phencyclidine)(hallucinogen)
 - [6] five hundred or more dosage units of a mixture

containing (amphetamine) (phencyclidine)
(hallucinogen)

[7] one or more mixtures of a total weight of fifty kilograms or more containing marijuana or tetrahydrocannabinols

[8] five hundred or more marijuana plants

is guilty of a crime.

¹List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).
caine, heroin, or methamphetamine as charged in the complaint.

²A narcotic drug other than co-

CRIMJIG 20.04**CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE—POSSESSION—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of a controlled substance crime in the first degree are:

First, the defendant knowingly possessed

[1] one or more mixtures of a total weight of fifty grams or more containing (cocaine) (methamphetamine).

[2] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine) and [choose one]

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]. [refer to and add CRIMJIG 2.09 for definition of accomplice][A “firearm” means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.]¹

[B] the offense involved [at least two of the following aggravating factors:][the following two aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of _____²;
and]

[2] the offense was committed for the benefit of a criminal gang. A “criminal gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activi-

ties the commission of one or more of the crimes of _____,³ has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

- [3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: _____, _____, and _____, counties [; and]
- [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]
- [5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]
- [6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]
- [7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]
- [8] the offense involved the sale of (cocaine) (methamphetamine) to _____, who is [under the age of eighteen] [a vulnerable adult] [A "vulnerable adult" is a person who is 18 years of age or older who (is a res-

ident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)) [; and]

- [9] the defendant or an accomplice (manufactured)(possessed)(sold) (cocaine) (methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased,

or controlled by a school district or an organization operating a nonpublic school where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A “correctional facility” means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.⁴] [A “drug treatment facility” means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and]

- [10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense

involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than twenty-five grams. [refer to and add CRIMJIG 2.09 for definition of accomplice]

- [3] one or more mixtures of a total weight of twenty-five grams or more containing heroin.
- [4] one or more mixtures of a total weight of five hundred grams or more containing _____.⁵
- [5] one or more mixtures of a total weight of five hundred grams or more containing (amphetamine)(phencyclidine)(hallucinogen).
- [6] five hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).
- [7] one or more mixtures of a total weight of fifty kilograms or more containing marijuana or tetrahydrocannabinols.
- [8] five-hundred or more marijuana plants.

“To know” requires only that the defendant believes that the specified fact exists.

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe (“bong”) only if the mixture contains four or more fluid ounces of fluid.⁶]

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive

possession of _____ (the controlled substance) if _____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of _____ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was a controlled substance.⁷

Third, the defendant's possession of _____ was without lawful authority.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹See M.S.A. § 609.666, subd. 1.

²List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).

³List offense from M.S.A. § 609.

11, subd. 9, as identified in the complaint. See M.S.A. § 609.229, subd. 1(1).

⁴“Correctional facility” is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A § 241.021, subd. 1(f).

⁵Insert narcotic drug other than cocaine, heroin or methamphetamine. See M.S.A. § 152.021, subd. 2(4).

⁶See *State v. Peck*, 773 N.W.2d

768 (Minn. 2009) and M.S.A. § 152.021, subd. 2(b), modifying *Peck*.

⁷The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.07**CONTROLLED SUBSTANCE CRIME IN THE
SECOND DEGREE—SALE—DEFINED**

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever, on one or more occasions within a ninety day period, unlawfully sells

- [1] one or more mixtures of a total weight of ten grams or more containing _____¹**
- [2] one or more mixtures of a total weight of three grams or more containing (cocaine) (methamphetamine) and [choose one]**
 - [A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]**
 - [B] the offense involved [at least three of the following aggravating factors:][the following three aggravating factors:]**
 - [1] the defendant, within the previous ten years, has been convicted of _____²[; and]**
 - [2] the offense was committed for the benefit of a criminal gang [; and]**
 - [3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties [; and]**
 - [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]**
 - [5] the offense involved at least three separate transactions in which (cocaine) (methamphet-**

amine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

- [6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]
- [7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]
- [8] the offense involved the sale of (cocaine) (methamphetamine) to (a person under the age of eighteen)(a vulnerable adult) [; and]
- [9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]
- [10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than three grams.

- [3] one or more mixtures of a total weight of three grams or more containing heroin
- [4] one or more mixtures of a total weight of ten grams or more containing (amphetamine) (phencyclidine) (hallucinogen)
- [5] fifty or more dosage units of a mixture containing (amphetamine)(phencyclidine)(hallucinogen)

[6] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols)

is guilty of a crime.

¹List narcotic drug other than heroin. See M.S.A. § 152.022, subd. 1(1). ²List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).

CRIMJIG 20.08**CONTROLLED SUBSTANCE CRIME IN THE
SECOND DEGREE—SALE—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of a controlled substance crime in the second degree are:

First, the defendant on one or more occasions within a ninety-day period sold

[1] one or more mixtures of a total weight of ten grams or more containing _____.¹

[2] one or more mixtures of a total weight of three grams or more containing (cocaine) (methamphetamine) and [choose one]

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]. [refer to and add CRIMJIG 2.09 for definition of accomplice]. [A “firearm” means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.]²

[B] The offense involved [at least three of the following aggravating factors:][the following three aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of _____³[; and]

[2] the offense was committed for the benefit of a criminal gang. A “criminal gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activi-

ties the commission of one or more of the crimes of _____,⁴ has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

[3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: _____, _____, and _____, counties [; and]

[4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]

[5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold)(transferred)(possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to _____, who is [under the age of eighteen] [a vulnerable adult] [A “vulnerable adult” is a person who is 18 years of age or older who (is a res-

ident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)] [; and]

- [9] the defendant or an accomplice (manufactured)(possessed)(sold) (cocaine) (methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased,

or controlled by a school district or an organization operating a nonpublic school⁵ where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A “correctional facility” means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.⁶] [A “drug treatment facility” means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and]

- [10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense

involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than three grams. [*refer to and add CRIMJIG 2.09 for definition of accomplice*]

- [3] one or more mixtures of a total weight of three grams or more containing heroin.
- [4] one or more mixtures of a total weight of ten grams or more containing (amphetamine)(phencyclidine)(hallucinogen).
- [5] fifty or more dosage units of a mixture containing (amphetamine)(phencyclidine)(hallucinogen).
- [6] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols).

“To sell” means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. [“To manufacture” means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was a controlled substance.⁷

Third, the defendant’s sale of _____ was without lawful authority.

Fourth, one or more sales took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven

beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹List narcotic drug other than heroin. See M.S.A. § 152.022, subd. 1(1).

²See M.S.A. § 609.666, subd. 1.

³List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).

⁴List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. See M.S.A. § 609.229, subd. 1(1).

⁵See M.S.A. § 123.932, subd. 3,

for the definition of a non-public school.

⁶“Correctional facility” is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A. § 241.021, subd. 1(f).

⁷The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.12**CONTROLLED SUBSTANCE CRIME IN THE
SECOND DEGREE—SALE/SCHOOLS/PARKS/
PUBLIC HOUSING/DRUG TREATMENT FACILITY—
ELEMENTS**

*Replace current Jury Instruction with the following text, Footnotes, and Comments:*¹

The elements of a controlled substance crime in the second degree are:

First, the defendant unlawfully sold (any amount of _____¹) (one or more mixtures containing methamphetamine or amphetamine) (one or more mixtures of a total weight of five kilograms or more containing marijuana or tetrahydrocannabinols).

“To sell” means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. [“To manufacture” means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.] A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance sold was _____ (a controlled substance).²

Third, the sale occurred in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A “school zone” is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school³ where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one

through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A “school zone” also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property. This includes the entire area of a city block located adjacent to or diagonally to the school property.⁴] [A “school zone” also includes the area within a school bus when the school bus⁵ is being used to transport one or more elementary or secondary school students.] [A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. “Park zone” includes the area within (three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A “public housing zone” is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property’s boundary,) (or) (one city block,) (whichever distance is greater).] [A “drug treatment facility” means a residential drug treatment facility, and includes any property owned, leased, or controlled by the facility.]

Fourth, the defendant’s sale was unlawful. (The defendant had no legal authority to sell ____.)

Fifth, defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 152.022, subd. 1(7).

A sale requires more than a temporary surrender of the controlled substance. *Barrow v. State*, 862 N.W.2d 686 (Minn. 2015).

In cities where no grid system is present, the term “one city block” does not apply and the transaction must take place within 300 feet of the park for the statute to apply. *See State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area “within one city block . . . of the park boundary” include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

¹The Schedule I or II narcotic, LSD, 3,4 methylenedioxy amphetamine, or 3,4 methylenedioxymetamphetamine.

²The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. *See State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). “To know” only requires

that the defendant believes that the specific fact exists under Minn. Stat. § 609.02, subd. 9.

³*See* Minn. Stat. § 123B.41, subd. 9 for the definition of a “nonpublic school.”

⁴*LaPenotiere v. State*, 916 N.W.2d 351 (Minn. 2018).

⁵*See* Minn. Stat. § 169.011, subd. 71, for the definition of a school bus.

CRIMJIG 20.13**CONTROLLED SUBSTANCE CRIME IN SECOND
DEGREE—POSSESSION—DEFINED**

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever unlawfully possesses

- [1] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine),**
- [2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [choose one]**
 - [A] that person or an accomplice [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm]**
 - [B] the offense involves [at least three of the following aggravating factors:] [the following three aggravating factors:]**
 - [1] the defendant, within the previous ten years, has been convicted of _____¹.**
 - [2] the offense was committed for the benefit of a criminal gang [; and]**
 - [3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties [; and]**
 - [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]**
 - [5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine)**

amine) (was)(were) (sold) (transferred) (possessed with intent to (sell) (transfer)) [; and]

[6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]

[7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [; and]

[8] the offense involved the sale of (cocaine) (methamphetamine) to (a person under the age of eighteen)(a vulnerable adult) [; and]

[9] the defendant or an accomplice manufactured, possessed, or sold (cocaine) (methamphetamine) in a school zone, park zone, correctional facility, or drug treatment facility [; and]

[10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than ten grams.

[3] one or more mixtures of a total weight of six grams or more containing heroin

[4] one or more mixtures of a total weight of fifty grams or more containing _____²

[5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine) (hallucinogen)

- [6] one hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).
 - [7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols).
 - [8] one hundred or more marijuana plants
- is guilty of a crime.

¹List violent crime as identified cocaine, heroin, or methamphetamine. in the complaint. See M.S.A. § 152.01, See M.S.A. § 152.022, subd. 2(a)(4). subd. 24(1).

²List narcotic drug other than

CRIMJIG 20.14**CONTROLLED SUBSTANCE CRIME IN THE
SECOND DEGREE—POSSESSION—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of a controlled substance crime in the second degree are:

First, the defendant knowingly possessed

[1] one or more mixtures of a total weight of twenty-five grams or more containing (cocaine) (methamphetamine).

[2] one or more mixtures of a total weight of ten grams or more containing (cocaine) (methamphetamine) and [choose one]¹

[A] (the defendant)(an accomplice) [possessed a firearm on their person or within immediate reach] [(brandished)(displayed)(threatened a person with)(otherwise employed) a firearm] [*refer to and add CRIMJIG 2.09 for definition of accomplice*]. [A “firearm” means a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion.]

[B] the offense involved [at least three of the following aggravating factors:][the following three aggravating factors:]

[1] the defendant, within the previous ten years, has been convicted of _____² [; and]

[2] the offense was committed for the benefit of a criminal gang. A “criminal gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary activi-

ties the commission of one or more of the crimes of _____,³ has a common name or common identifying symbol, and includes members who individually or collectively engage in a pattern of criminal activity [; and]

- [3] the offense involved separate acts of sale or possession of (cocaine) (methamphetamine) in three or more counties, specifically: _____, _____, and _____, counties [; and]
- [4] the offense involved the transfer of (cocaine) (methamphetamine) across the (state)(international) border and into Minnesota [; and]
- [5] the offense involved at least three separate transactions in which (cocaine) (methamphetamine) (was)(were) (sold) (transferred) (possessed with intent to (sell) (transfer)) [; and]
- [6] the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy [; and]
- [7] the defendant used a position or status to facilitate the commission of the offense, including a position of (trust) (confidence) (fiduciary relationship) [A fiduciary relationship exists when a person, referred to as the fiduciary, holds a superior position of authority and control over the property of another person referred to as the principal, and in whom the principal places a high level of trust and confidence.] [; and]
- [8] the offense involved the sale of (cocaine) (methamphetamine) to _____, who is[under the age of eighteen] [a vulnerable adult] [A "vulnerable adult" is a person who is 18 years of age or older who (is a res-

ident inpatient of a facility) (receives services at or from a facility required to be licensed by the Commissioner of Human Services to serve adults, except that a person who receives outpatient services for treatment of chemical dependency or mental illness or who has been committed as a sexual psychopathic personality or sexually dangerous person is not considered a vulnerable adult unless that person possesses a physical or mental infirmity or there is physical or mental emotional dysfunction that impairs the person's ability to provide adequately for his or her own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment) (receives services from a home care provider licensed by the Commissioner of Human Services or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services) (regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the person's ability to provide adequately for his or her care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and, because of the dysfunction or infirmity and the need for assistance, has an impaired ability to protect self from maltreatment)) [; and]

- [9] the defendant or an accomplice (manufactured)(possessed) (sold) (cocaine) (methamphetamine) in a (school zone)(park zone)(correctional facility)(drug treatment facility) [A "school zone" is any property owned, leased,

or controlled by a school district or an organization operating a nonpublic school⁴ where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus is being used to transport one or more elementary or secondary school students.] [A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area (within three hundred feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A “correctional facility” means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.⁵] [A “drug treatment facility” means a residential treatment facility, and includes any property owned, leased, or controlled by the facility.] [*refer to and add CRIMJIG 2.09 for definition of accomplice*] [; and]

- [10] the defendant or an accomplice possessed (equipment) (drug paraphernalia) (documents) (money) evidencing that the offense

involved the (cultivation) (manufacture) (distribution) (possession) of (cocaine) (methamphetamine) in quantities substantially larger than twenty-five grams. [refer to and add CRIMJIG. 2.09 for definition of accomplice].

- [3] one or more mixtures of a total weight of six grams or more containing heroin.
- [4] one or more mixtures of a total weight of fifty grams or more containing _____⁶
- [5] one or more mixtures of a total weight of fifty grams or more containing (amphetamine) (phencyclidine)(hallucinogen).
- [6] one hundred or more dosage units of a mixture containing (amphetamine) (phencyclidine) (hallucinogen).
- [7] one or more mixtures of a total weight of twenty-five kilograms or more containing (marijuana) (tetrahydrocannabinols).
- [8] one hundred or more marijuana plants.

“To know” requires only that the defendant believes that the specified fact exists.

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe (“bong”) only if the mixture contains four or more fluid ounces of fluid.⁷]

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive

possession of _____ (the controlled substance) if _____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance⁸). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of _____ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was a controlled substance.⁹

Third, the defendant's possession of _____ was without lawful authority.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹See M.S.A. § 609.666, subd. 1.

²List violent crime as identified in the complaint. See M.S.A. § 152.01, subd. 24(1).

³List offense from M.S.A. § 609.11, subd. 9, as identified in the complaint. See M.S.A. § 609.229, subd. 1(1).

⁴See M.S.A. § 123.932, subd. 3, for the definition of a non-public school.

⁵"Correctional facility" is not defined in Chapter 152, so the committee has incorporated the definition found in M.S.A. § 241.021, subd. 1(f).

⁶List narcotic drug other than cocaine, heroin, or methamphetamine. See M.S.A. § 152.022, subd. 2(a)(4).

⁷See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.022, subd. 2(b), modifying *Peck*.

⁸In *State v. Hunter*, 857 N.W.2d

537 (Minn. App. 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

⁹The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.15

CONTROLLED SUBSTANCE CRIME IN THE THIRD
DEGREE—SALE—DEFINED

COMMENT

Add the following text as the third paragraph to the Comment:

The Supreme Court, in *Barrow v. State*, 862 N.W.2d 686 (Minn. 2015), held that defendant's transfer of drugs to his wife to conceal his possession of the drugs did not constitute a "sale" within the meaning of the statute. Defendant did not give up his interest in the cocaine for her use but to hide it, so the "give away" portion of the definition of "sell" was not satisfied. In order to find a "sale," the fact-finder must find a surrender of the defendant's possessory interest.

Research References

West's Key Number Digest
Drugs and Narcotics ¶68

Legal Encyclopedias
C.J.S., Drugs and Narcotics §§ 158, 163, 178, 181 to 182, 193

CRIMJIG 20.19**CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION—DEFINED**

Replace the current Jury Instruction with the following text:

Under Minnesota law, whoever, on one or more occasions within a ninety-day period, unlawfully possesses

- [1] one or more mixtures of a total weight of ten grams or more containing _____.¹**
- [2] one or more mixtures of a total weight of three grams or more containing heroin.**
- [3] fifty or more dosage units of a mixture containing _____.²**
- [4] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols).**

is guilty of a crime.

¹Insert narcotic drug other than heroin as identified in the complaint. See M.S.A. § 152.023, subd. 2(a)(1).

²Insert narcotic drug as identified in the complaint. See M.S.A. § 152.023, subd. 2(a)(3).

CRIMJIG 20.20**CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE—POSSESSION—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of possession of a controlled substance crime in the third degree are:

First, the defendant on one or more occasions within a ninety-day period knowingly possessed

[1] one or more mixtures of a total weight of ten grams or more containing _____.¹

[2] one or more mixtures of a total weight of three grams or more containing heroin.

[3] fifty or more dosage units of a mixture containing _____.²

[4] one or more mixtures of a total weight of ten kilograms or more containing (marijuana) (tetrahydrocannabinols).

“To know” requires only that the defendant believes that the specified fact exists.

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe (“bong”) only if the mixture contains four or more fluid ounces of fluid.³]

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive possession of _____ (the controlled substance) if

_____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance⁴). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of _____ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance possessed was a controlled substance.⁵

Third, the defendant's possession of _____ was without lawful authority.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹Insert narcotic drug other than heroin as identified in the complaint. See M.S.A. § 152.023, subd. 2(a)(1).

²Insert narcotic drug as identified in the complaint. See M.S.A. § 152.023, subd. 2(a)(3).

³See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.023, subd. 2(b), modifying *Peck*.

⁴In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2015), the Court of Appeals indicated that the use of the

pronoun "it" created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

⁵The defendant need only know

that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009).

CRIMJIG 20.22**CONTROLLED SUBSTANCE CRIME IN THE THIRD
DEGREE—POSSESSION IN SCHOOL/PARK/PUBLIC
HOUSING ZONE/DRUG TREATMENT FACILITY—
ELEMENTS**

Replace the current Jury Instruction with the following text, Footnotes, and Comments:

The elements of a controlled substance crime in the third degree are:

First, the defendant knowingly possessed ((any amount of _____¹ on one or more occasions within a 90-day period) (five or more dosage units of _____² on one or more occasions within a 90-day period) (one or more mixtures containing (amphetamine) (or) (methamphetamine). “To know” requires only that the defendant believes that the specified fact exists.)

[A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity. [The weight of a mixture includes the fluid in a water pipe (“bong”) only if the mixture contains four or more fluid ounces of fluid.³]]

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive possession of _____ (the controlled substance) if _____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance⁴). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a

reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of _____ (a controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance the defendant possessed was _____ (a controlled substance).⁵

Third, the defendant possessed the _____ (controlled substance) in a [school zone] [park zone] [public housing zone] [drug treatment facility].

[A "school zone" is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school⁶ where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A school zone also includes the area surrounding the school property to a distance of 300 feet or one city block, whichever is greater, beyond the school property.] [A school zone also includes the area within a school bus when the school bus⁷ is being used to transport one or more elementary or secondary school students.] [A "park zone" is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within (three hundred feet) (or) (one city block,)

(whichever distance is greater,) of the park boundary.] [A “public housing zone” is a public housing project or development administered by a local housing agency, plus the area within (three hundred feet of the property’s boundary,) (or) (one city block,) (whichever distance is greater).] [A “drug treatment facility” is a licensed residential drug treatment facility, and includes property owned, leased, or controlled by the facility.]

Fourth, the defendant’s possession of _____ was without lawful authority.

Fifth, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

M.S.A. § 152.023, subds. 2(4) and 2(6).

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

In cities where no grid system is present, the term “one city block” does not apply and the transaction must take place within 300 feet of the park for the statute to apply. See *State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area “within one city block . . . of the park boundary” include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

The Supreme Court, in *State v. Benniefield*, 678 N.W.2d 42 (Minn. 2004), held that the State is not required to prove that a defendant knew that he was in a school zone or intended to commit the crime in a school zone.

¹The Schedule I or II narcotic drug alleged in the complaint.

²LSD, 3,4 methylenedioxy amphetamine, or 3,4 methylenedioxyamphetamine.

³See *State v. Peck*, 773 N.W.2d 768 (Minn. 2009) and M.S.A. § 152.021, subd. 2(b), modifying *Peck*.

⁴In *State v. Hunter*, 857 N.W.2d 537 (Minn. App 2014), the Court of Appeals indicated that the use of the pronoun “it” created an ambiguity in the previous version of this instruction. It is recommended the item possessed be particularly identi-

fied throughout the instruction.

⁵The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). “To know” only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

⁶See Minn. Stat. § 123B.41, subd. 9 for the definition of a “nonpublic school.”

⁷See M.S.A. § 169.011, subd. 71, for the definition of a school bus.

CRIMJIG 20.27

**CONTROLLED SUBSTANCE CRIME IN THE
FOURTH DEGREE—SALE—SCHOOL/PARK/PUBLIC
HOUSING ZONE/DRUG TREATMENT FACILITY—
DEFINED**

COMMENT

Replace Comment two with the following text:

See Minn. Stat. § 123B.41, subd. 9 for the definition of a “nonpublic school.”

CRIMJIG 20.28

**CONTROLLED SUBSTANCE CRIME IN THE
FOURTH DEGREE—SALE—SCHOOL/PARK/PUBLIC
HOUSING ZONE—ELEMENTS**

n. 1.

Replace Footnote one with the following text:

*See Minn. Stat. § 123B.41, subd. 9 school.”
for the definition of a “nonpublic*

CRIMJIG 20.32**CONTROLLED SUBSTANCE CRIME IN THE
FOURTH DEGREE—POSSESSION—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of controlled substance crime in the fourth degree are:

First, the defendant knowingly possessed one or more mixtures of (phencyclidine) (or) (a hallucinogen).

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive possession of _____ (the controlled substance) if _____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of _____ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

“To know” requires only that the defendant believes that the specified fact exists.

Second, the (phencyclidine) (or) (hallucinogen) was packaged in dosage units and equaled ten or more dosage units of _____.¹

Third, the defendant knew or believed that the substance the defendant possessed was _____ (a controlled substance).²

Fourth, the defendant’s possession of _____ was without lawful authority.

Fifth, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹Phencyclidine or a hallucinogen.

²The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was.

See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). “To know” only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.33**CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—SALE—MARIJUANA OR SCHEDULE IV—DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever unlawfully sells one or more mixtures containing ((marijuana) (or) (tetrahydrocannabinols) (except a small amount of marijuana for no remuneration)) (——¹) is guilty of a crime.

COMMENT

Minn. Stat. § 152.025, subd. 1.

¹A. Schedule IV controlled substance.

CRIMJIG 20.34**CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE—SALE—MARIJUANE OR SCHEDULE IV—ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of sale of a controlled substance crime in the fifth degree are:

First, the defendant sold one or more mixtures containing (marijuana or tetrahydrocannabinols) (_____').

“To sell” means to sell, give away, barter, deliver, exchange, distribute, or dispose of to another, to offer or agree to do the same, to possess with intent to do the same, or to manufacture. [“To manufacture” means and includes the production, cultivation, quality control, and standardization of drugs by mechanical, physical, chemical, or pharmaceutical means, their packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or other processing.]

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

Second, the defendant knew or believed that the substance the defendant sold was a controlled substance.²

“To know” requires only that the defendant believes that the specified fact exists.³

[Third, the amount of marijuana or tetrahydrocannabinols sold was (over 42.5 grams) (or) the amount was 42.5 grams or less and the defendant received remuneration for the marijuana.⁴

“Marijuana” means all parts of the plant of any species of the genus *Cannabis*, including all agronomical varieties, whether growing or not; the seeds thereof;

the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marijuana" does not include hemp.⁵

"Remuneration" means payment of money or other compensation.]

(Third) (Fourth), the defendant's sale was without lawful authority.

(Fourth) (Fifth), the defendant's act took place on (or about) —, in — County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 152.025, subd. 1.

¹A Schedule IV controlled substance.

²The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was.

See State v. Ali, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009).

³Minn. Stat. § 609.02, subd. 9(2).

⁴*See* Minn. Stat. § 152.01, subd. 16 (defining "small amount").

⁵Minn. Stat. § 152.01, subd. 9.

CRIMJIG 20.35**CONTROLLED SUBSTANCE CRIME IN THE FIFTH
DEGREE—POSSESSION—DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever unlawfully possesses one or more mixtures containing [insert name of Schedule I, II, III or IV controlled substance] is guilty of a crime.

COMMENT

Minn. Stat. § 152.025, subd. 2(1).

CRIMJIG 20.36**CONTROLLED SUBSTANCE CRIME IN THE FIFTH
DEGREE—POSSESSION—ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant knowingly possessed one or more mixtures containing ____.¹

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of ____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over ____ (the controlled substance) at a given time. A person is in constructive possession of ____ (the controlled substance) if ____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over ____ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]²

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of ____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of ____ (a controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of ____ (the controlled substance), whether exclusively or jointly with others.]³

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.⁴

“To know” requires only that the defendant believes that the specified fact exists.⁵

[Second, the amount of marijuana possessed by the defendant was more than 42.5 grams.⁶

“Marijuana” means all parts of the plant of any species of the genus *Cannabis*, including all agronomical varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. “Marijuana” does not include hemp.⁷]

(Second) (Third), the defendant knew or believed that the substance the defendant possessed was a controlled substance.⁸

(Third) (Fourth), the defendant’s possession of ____ was without lawful authority.

(Fourth) (Fifth), the defendant’s act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant guilty, you have (an) additional issue(s) to determine, and (it) (they) will be put to you in

the form of (a) question(s) on the verdict form.⁹ The question(s) (is) (are):

Was the amount of heroin possessed by the defendant 0.05 grams or more?¹⁰

Was the amount of (*insert name of controlled substance other than heroin*) possessed by the defendant 0.25 grams or more?¹¹

Was the defendant previously convicted of a violation of (Minnesota Statutes chapter 152) (or) (*insert statute constituting a similar offense in another jurisdiction*)?¹²

[For each question:] If you find the fact has been proven beyond a reasonable doubt, you must answer “yes.” If you find the fact has not been proven beyond a reasonable doubt, you must answer “no.”

COMMENT

Minn. Stat. § 152.025, subd. 2(1).

¹A Schedule I, II, III, or IV controlled substance except a small amount of marijuana.

²See *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

³See *State v. LaBarre*, 195 N.W.2d 435, 441 (Minn. 1972).

⁴Minn. Stat. § 152.01, subd. 9a.

⁵Minn. Stat. § 609.02, subd. 9(2).

⁶The statute does not apply to a small amount of marijuana. See Minn. Stat. § 152.01, subd. 16 (defining “small amount”).

⁷Minn. Stat. § 152.01, subd. 9.

⁸The defendant need only know that it was a controlled substance and not what the exact scientific description of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009).

⁹Special verdict forms should include only the enhancing factors that correspond to the crime(s) charged in the complaint or permitted

by the court as a lesser-included offense under Minn. Stat. § 609.04.

¹⁰This special interrogatory should be used if the defendant is charged with a felony based on the weight of the controlled substance, specifically heroin.

¹¹This special interrogatory should be used if the defendant is charged with a felony based on the weight of the controlled substance other than heroin.

¹²This special interrogatory should be included when the defendant is charged with a felony violation based on a prior conviction. The defendant is entitled to stipulate to the existence of a prior conviction. *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). Such a stipulation constitutes a waiver of jury trial on this element, and the defendant’s waiver must be made personally and on the record. If the defendant has stipulated to the

prior conviction, that information and this interrogatory should not be should not be presented to the jury, used.

CRIMJIG 20.42**OTHER CONTROLLED SUBSTANCE OFFENSE
INCLUDING SALVIA DIVINORUM AND SYNTHETIC
CANNABINOIDS—POSSESSION—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of possession of controlled substance offense are:

First, the defendant knowingly possessed one or more mixtures containing ____.¹

A “mixture” is a preparation, compound, mixture, or substance containing a controlled substance, regardless of its purity.

“To know” requires only that the defendant believes that the specified fact exists.

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive possession of _____ (the controlled substance) if _____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons

share actual or constructive possession of _____ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the substance the defendant possessed was _____ (a controlled substance).²

Third, the defendant's possession of _____ was without lawful authority.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹A Schedule V controlled substance, salvia divinorum or synthetic cannabinoids.

²The defendant need only know that it was a controlled substance and not what the exact scientific descrip-

tion of the controlled substance was. See *State v. Ali*, 775 N.W.2d 914 (Minn. App. 2009). "To know" only requires that the defendant believes that the specific fact exists under M.S.A. § 609.02, subd. 9.

CRIMJIG 20.44**POSSESSION OF A SMALL AMOUNT OF MARIJUANA IN A MOTOR VEHICLE—ELEMENTS**

Replace the current Jury Instruction with the following text:

The elements of (possession of) (keeping) (allowing to be kept) a small amount of marijuana in a motor vehicle are:

First, the defendant was (the owner of a private motor vehicle) (the driver of a private motor vehicle while the owner was not present).

[1] Second, the defendant possessed on (his) (her) person more than 1.4 grams of marijuana.

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (the controlled substance) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the controlled substance) at a given time. A person is in constructive possession of _____ (the controlled substance) if _____ (the controlled substance) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____ (the controlled substance). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (a controlled substance), possession is exclusive. If two or more persons share actual or constructive possession of _____ (controlled substance), possession is joint. You may find that the element of possession, as that term is used in these

instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the controlled substance), whether exclusively or jointly with others.]

[2] Second, the defendant knowingly (kept) (allowed to be kept) more than 1.4 grams of marijuana in the motor vehicle, within the area of the motor vehicle normally occupied by the driver or passengers. "To know" requires only that the defendant believes that the specified fact exists. [This area of the vehicle does not include the trunk of the motor vehicle, when such vehicle is equipped with a trunk or another area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment is within the area occupied by the driver and passengers.]

Third, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 20.46**(DELIVERY) (POSSESSION FOR DELIVERY)
(MANUFACTURE FOR DELIVERY) OF DRUG
PARAPHERNALIA—ELEMENTS**

Replace the current Jury Instruction with the following text:

**The elements of (delivery)(possession for delivery-)
(manufacture for delivery) of drug paraphernalia are:**

First, the defendant knowingly or intentionally (delivered drug paraphernalia) (possessed drug paraphernalia for delivery) (manufactured drug paraphernalia for delivery).

“Drug paraphernalia” means equipment, products, and materials of any kind knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

“To know” requires only that the defendant believes that the specified fact exists.

[The law recognizes two kinds of possession: “actual possession” and “constructive possession.” A person is in actual possession of _____ (an item) if (he) (she) has it on (his) (her) person or is exercising direct physical control over _____ (the item) at a given time. A person is in constructive possession of _____ (an item) if _____ (the item) was in a place under (his) (her) exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over _____¹ (the item). You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession.]

[The law also recognizes that possession may be either exclusive or joint. If one person alone has actual or constructive possession of _____ (an item), possession is exclusive. If two or more persons share actual or constructive possession of _____ (an item), possession is joint. You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that defendant had actual or constructive possession of _____ (the item), whether exclusively or jointly with others.]

Second, the defendant knew or believed that the equipment, products, or materials (was) (were) drug paraphernalia.

Third, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹In *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014) the Court of Appeals indicated that the use of the pronoun "it" created an ambiguity in

the previous version of this instruction. It is recommended the item possessed be particularly identified throughout the instruction.

COMMENT

Replace the second paragraph to the Comment with the following text:

The requirements for constructive possession are drawn from *State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463 (1976), and *State v. Florine*, 303 Minn. 103, 226 N.W.2d 609 (1975). Possession need not be by the defendant alone, but may be shared with others. *State v. LaBarre*, 292 Minn. 228, 195 N.W.2d 435 (1972). See also *State v. Hunter*, 857 N.W.2d 537 (Minn. App. 2014), in which the Court of Appeals held that possession requires dominion and control over the controlled substance and not the place where the controlled substance is found.

CRIMJIG 20.61**GREAT BODILY HARM CAUSED BY DISTRIBUTION
OF DRUGS—DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever proximately causes great bodily harm by, directly or indirectly, unlawfully and intentionally selling, giving away, bartering, delivering, exchanging, distributing, or administering [INSERT name of Schedule I or II controlled substance] is guilty of a crime.

COMMENT

Minn. Stat. § 609.228.

CRIMJIG 20.62**GREAT BODILY HARM CAUSED BY DISTRIBUTION
OF DRUGS—ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, it must be proven that (the alleged victim) (——) suffered great bodily harm.

“Great bodily harm” means bodily harm that causes a high probability of death, causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any part of the body, or other serious bodily harm.¹

Second, the defendant directly or indirectly sold, gave away, bartered, delivered, exchanged, distributed, or administered [INSERT name of Schedule I or II controlled substance].²

[INSERT name of Schedule I or II controlled substance] is a controlled substance.

Third, the defendant acted intentionally.³

“Intentionally” means that the defendant had a purpose to sell, give away, barter, deliver, exchange, distribute, or administer a controlled substance [or believed that (his) (her) act, if successful, would result in (him) (her) selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance]. In addition, the defendant, at the time of the act, must have had knowledge of those facts which were necessary to make the defendant’s conduct criminal.⁴

[It is not necessary that the defendant intended to cause great bodily harm, or that the defendant knew or believed that great bodily harm would result, but

only that the defendant intended to sell, give away, barter, deliver, exchange, distribute, or administer the controlled substance.]

Fourth, the defendant knew or believed that the substance sold, given away, bartered, delivered, exchanged, distributed, or administered was a controlled substance.⁵

Fifth, the defendant's act of selling, giving away, bartering, delivering, exchanging, distributing, or administering [INSERT name of Schedule I or II controlled substance] was without lawful authority.

Sixth, the defendant proximately caused great bodily harm to (the alleged victim) (____) by selling, giving away, bartering, delivering, exchanging, distributing, or administering [INSERT name of Schedule I or II controlled substance].

"To proximately cause" means to be a substantial causal factor in causing the great bodily harm. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the great bodily harm does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the great bodily harm. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred.⁶

Seventh, the defendant's acts took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a rea-

sonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.228.

Where married persons jointly acquire and possess a controlled substance, one spouse may not be convicted of this offense based on distribution to the other spouse. *See State v. Carithers*, 490 N.W.2d 620, 622 (Minn. 1992); *State v. Schnagl*, 907 N.W.2d 188, 200 (Minn. Ct. App. 2017).

¹Minn. Stat. § 609.02, subd. 8.

²Whether a particular drug is a Schedule I or II controlled substance under Minn. Stat. § 152.02 is a question of law with which the jury is not concerned. *See State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009).

³As this is a felony offense, a *mens rea* requirement must be read into the statute. *See State v. Ndikum*, 815 N.W.2d 816, 819 (Minn. 2012).

⁴*See* Minn. Stat. § 609.02, subd. 9(3).

⁵In general, the State is not required to prove that the defendant knew the precise identity of the con-

trolled substance. *See State v. Ali*, 775 N.W.2d 914, 919 (Minn. Ct. App. 2009). If, however, the defendant had lawful authority to sell one or more controlled substances, the jury should be instructed that the state must prove the defendant knew or believed that the substance sold or administered was one other than the substance(s) for which the defendant had lawful authority.

⁶*See State v. Smith*, 835 N.W.2d 1, 5 (Minn. 2013); *State v. Olson*, 435 N.W.2d 530, 534 (Minn. 1989); *State v. Smith*, 119 N.W.2d 838, 847-48 (Minn. 1962).

CRIMJIG 20.64

CONTROLLED SUBSTANCE CRIME—
METHAMPHETAMINE MANUFACTURER—
POSSESSION OF PRECURSORS—ELEMENTS

n. 1.

Replace footnote one with the following text:

See M.S.A. § 152.0262, subd. 1(b) which items in the defendant's possession are chemical reagents or precursors under Minn. Stat. § 152.0262, subd. 1(b)).
See *State v. Winbush*, 912 N.W.2d 678 (Minn. App. 2018) (holding it is plain error to fail to instruct the jury as to

D. CRIMES AGAINST THE GOVERNMENT AND THE ADMINISTRATION OF JUSTICE

CHAPTER 22

PERJURY

CRIMJIG 22.02

PERJURY—ACTION, HEARING, OR PROCEEDING— ELEMENTS

Replace the current jury instruction with the following text:

The elements of perjury are:

First, the defendant made the alleged statement(s) under oath (or affirmation) in _____. This (action) (hearing) (proceeding) was one in which the statement was (required) (authorized) to be made under oath or affirmation. (An “affirmation” is a solemn statement made as a substitute for a sworn statement by a person whose conscience will not permit the person to take an oath.)

Second, the statement was false.

Third, the statement was material. A statement is material if the statement has a natural tendency to influence or is capable of influencing the decision of the [decision-making body] [person] to whom it is made.

Fourth, the defendant did not believe the statement(s) to be true. [If you find the defendant made two statements under oath that are inconsistent, and you find the defendant could not have believed each of the statements, when made, to be true, you may find the defendant intentionally

made a false statement. It is not necessary for you to decide which statement was false.]"¹

Fifth, the defendant knew that (he) (she) was under (oath) (affirmation).

Sixth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹Use the bracketed language tent statements or affirmations. when the case involves two inconsis-

COMMENT

Add the following language as the third paragraph of the Comment:

The definition of "material" is drawn from *State v. Burnett*, 867 N.W.2d 534 (Minn. App. 2015).

CRIMJIG 22.13

**FALSE STATEMENT TO A PEACE OFFICER—
DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever, with intent to obstruct justice, gives

- [1] a fictitious name (other than a nickname)**
- [2] a false date of birth**
- [3] a false or fraudulently altered identification card**
- [4] the name and birth date of another**

to a peace officer, when that officer makes inquiries incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law, is guilty of a crime.

COMMENT

Minn. Stat. § 609.506, subds. 1, 2.

CRIMJIG 22.14**FALSE STATEMENT TO A PEACE OFFICER—
ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

[1] First, the defendant gave a fictitious name (other than a nickname).

["Fictitious name" includes a name that uses only parts of a full legal name.¹]

[2] First, the defendant gave a false date of birth.

[3] First, the defendant gave a false or fraudulently altered identification card.

[4] First, the defendant gave the name and birth date of another person.

Second, the defendant gave the (fictitious name) (false date of birth) (false or fraudulently altered identification card) (name and date of birth of another person) to a peace officer, when that officer was making (inquiries incident to a lawful investigatory stop) (a lawful arrest) (inquiries incident to executing any duty imposed by law).

Third, the defendant acted with intent to obstruct justice.

"With intent to" means that the defendant either has a purpose to do the thing or cause the result specified, or believes that the act, if successful, will cause that result.²

Fourth, the defendant's act took place on (or about) —, in — County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a rea-

sonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.506, subds. 1, 2.

¹*State v. Thompson*, 950 N.W. 2d 65, 68 (Minn. 2020).

²Minn. Stat. § 609.02, subd. 9 (4).

E. OTHER CRIMES

CHAPTER 28

GAME AND FISH VIOLATIONS

CRIMJIG 28.11

TAKING WILD ANIMALS WHILE UNDER THE INFLUENCE—DEFINED

Replace current Jury Instruction with the following Text and Comment:

Under Minnesota law, whoever takes wild animals with a firearm or by archery when the person

- [1] is under the influence of alcohol,**
- [2] is under the influence of a controlled substance,**
- [3] is under the influence of a combination of alcohol and a controlled substance,**
- [4] has an alcohol concentration of 0.08 or more,**
- [5] has an alcohol concentration of 0.08 or more as measured within two hours of the time of hunting,**
- [6] is under the influence of an intoxicating substance and knows or has reason to know the substance has the capacity to cause impairment is guilty of a crime.**

COMMENT

Minn. Stat. § 97B.065, subd. 1.

CRIMJIG 28.12**TAKING WILD ANIMALS WHILE UNDER THE
INFLUENCE—ELEMENTS**

Replace current Jury Instruction with the following Text, Comments, and Footnote:

The elements of this crime are:

First, the defendant took a wild animal with a firearm or by archery.

“To take” includes to pursue, shoot, kill, capture, trap, snare, spear or net or to attempt to do those things or assist another person in taking an animal.

[Insert CRIMJIG 5.02 on Attempt if appropriate.]

Second,

[1] at the time the defendant took the wild animal, the defendant was under the influence of alcohol.

If a person ingests alcohol and is not influenced by it, this element has not been proven. If, as a result of ingesting the alcohol, the person’s ability or capacity to take a wild animal, is impaired, then this element has been proven.

There is no set standard as to the quantity of alcohol a person must ingest before being regarded as “under the influence.” When a person is so affected by the alcohol that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”¹

[2] at the time the defendant took the wild animal, the defendant was under the influence of a controlled substance. _____ is a controlled substance.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as

a result of ingesting the substance, the person's ability or capacity to take a wild animal, is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."²

[3] at the time the defendant took the wild animal, the defendant was under the influence of a combination of alcohol and a controlled substance. (_____ is a controlled substance).

If a person ingests a combination of alcohol and a controlled substance and is not influenced by it, this element has not been proven. If, as a result of ingesting the combination of alcohol and controlled substance, the person's ability or capacity to take a wild animal, is impaired, then this element has been proven.

There is no set standard as to the quantity of a combination of alcohol and controlled substance a person must ingest before being regarded as "under the influence." When a person is so affected by the combination of alcohol and controlled substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."³

[4] at the time the person took the wild animal, the defendant's alcohol concentration was 0.08 or more.

This means (the number of grams of alcohol per 100 milliliters of blood was 0.08 or more) (the number of grams of alcohol per 210 liters of breath was 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine was 0.08 or more).

[5] within two hours of the time the defendant took the wild animal, the defendant's alcohol concentration was 0.08 or more.

An "alcohol concentration of 0.08 or more" means (the number of grams of alcohol per 100 milliliters of blood was 0.08 or more) (the number of grams of alcohol per 210 liters of breath was 0.08 or more) (the number of grams of alcohol per 67 milliliters of urine was 0.08 or more).

[6] at the time the defendant took the wild animal, the defendant was under the influence of an intoxicating substance and defendant knew or had reason to know that the substance had the capacity to cause impairment.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.⁴ [— is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.⁵]

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of —, ⁶ regardless of whether the substance is marketed for the purpose of human consumption.⁷]

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.⁸]

“To know” requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person’s ability or capacity to take a wild animal, is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”⁹

Third, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 97B.065, subd. 1.

The definition of “take” is from Minn. Stat. § 97A.015, subd. 47. See *State v. Schmid*, 859 N.W.2d 816 (Minn. 2015); *State v. O’Heron*, 83 N.W.2d 785 (Minn. 1957).

In *State v. Ritter*, 486 N.W.2d 832 (Minn. Ct. App. 1992), the Court of Appeals held that conduct preparatory to hunting did not constitute attempting to take wild animals within the meaning of a statute that prohibited taking wild animals while under the influence of intoxicants.

¹See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

²See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222

N.W. 909 (Minn. 1929).

³See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

⁴Minn. Stat. § 169A.03, subd.

- 11a. ⁵Minn. Stat. § 151.01, subd. 5. ⁷Minn. Stat. § 151.01, subd. 5.
⁶Insert name of one or more substance(s) listed in Schedules I or II. See ⁸Minn. Stat. § 151.01, subd. 8.
⁹See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).
Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

CHAPTER 29

TRAFFIC

CRIMJIG 29.07

DRIVING WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED [Retitled]

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1(4).

CRIMJIG 29.08**DRIVING WHILE UNDER THE INFLUENCE OF A
COMBINATION OF ALCOHOL AND/OR A
CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle [upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water of this state].

["To drive" means to exercise physical control over the speed and direction of a motor vehicle while it is in motion.]

["To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.]¹

[A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

["Motor vehicle" means any vehicle that is self-propelled.] ["Motor vehicle" also includes any vehicle that is propelled by electric power obtained from overhead trolley wires.] ["Motor vehicle" also includes motorboats in operation and off-road recreational vehicles.] ["Motor vehicle" does not include any vehicle moved solely by human power.]²

Second, at the time the defendant was (driving)

(operating) (in physical control of) a motor vehicle, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, which the defendant knew or had reason to know had the capacity to cause impairment).

[An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.³ [— is not a controlled substance.]]

[“Drug” means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]⁴

[The term “drug” also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of —,⁵ regardless of whether the substance is marketed for the purpose of human consumption.]⁶

[“Chemical” means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁷

“To know” requires only that the actor believes that the specified fact exists.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person’s ability or capacity to operate a motor vehicle is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”⁸

Third, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury’s consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1(4).

¹*State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term “operating” in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

²See Minn. Stat. § 169A.03, subd. 15.

³Minn. Stat. § 169A.03, subd.

11a.

⁴Minn. Stat. § 151.01, subd. 5.

⁵Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subsd. 2, 3; Minn. Rules 6800.4210, .4220.

⁶Minn. Stat. § 151.01, subd. 5.

⁷Minn. Stat. § 151.01, subd. 8.

⁸See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.13

DRIVING WHILE UNDER THE INFLUENCE OF AN
INTOXICATING SUBSTANCE—DEFINED [Retitled]

Replace current Jury Instruction with the following new Title, text, and Comment:

Under Minnesota law, whoever (drives) (operates) (is in physical control of) a motor vehicle, when the person is under the influence of an intoxicating substance and knows or has reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1(3).

CRIMJIG 29.14**DRIVING WHILE UNDER THE INFLUENCE OF AN
INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (drove) (operated) (was in physical control of) a motor vehicle [upon the ice of any lake, stream, or river, including, but not limited to, the ice of any boundary water of this state].

["To drive" means to exercise physical control over the speed and direction of a motor vehicle while it is in motion.]

["To operate" means to perform any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.]¹

[A person is in "physical control" of a motor vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a motor vehicle.]

["Motor vehicle" means any vehicle that is self-propelled.] ["Motor vehicle" also includes any vehicle that is propelled by electric power obtained from overhead trolley wires.] ["Motor vehicle" also includes motorboats in operation and off-road recreational vehicles.] ["Motor vehicle" does not include any vehicle moved solely by human power.]²

Second, at the time the defendant was (driving) (operating) (in physical control of) a motor vehicle, the defendant was under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.³ [_____ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]⁴

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,⁵ regardless of whether the substance is marketed for the purpose of human consumption.]⁶

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁷

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate a motor vehicle is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁸

Third, the defendant knew or had reason to know that the substance had the capacity to cause impairment.

“To know” requires only that the actor believes that the specified fact exists.

Fourth, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20—Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury’s consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1(3).

¹*State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term “operating” in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

²See Minn. Stat. § 169A.03, subd. 15.

³Minn. Stat. § 169A.03, subd. 11a.

⁴Minn. Stat. § 151.01, subd. 5.

⁵Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

⁶Minn. Stat. § 151.01, subd. 5.

⁷Minn. Stat. § 151.01, subd. 8.

⁸See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.15**DRIVING WITH AN ALCOHOL CONCENTRATION
OF 0.08 OR MORE AS MEASURED WITHIN TWO
HOURS OF THE TIME OF DRIVING—AFFIRMATIVE
DEFENSE**

Replace the current jury instruction with the following text:

The defendant is not guilty of violating this statute if you are convinced, by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of actual (driving) (operating) (physical control) of a motor vehicle and before the administration of the evidentiary test to cause the alcohol concentration to exceed (0.08) (0.16).

By the term “preponderance of the evidence,” it is meant that all of the evidence produced must lead you to believe it is more likely that the claim is true than not true. Therefore, if you find it is more likely true than not true that the defendant’s alcohol concentration exceeded (0.08) (0.16) as a result of alcohol consumed after the time of (driving) (operating) (being in physical control of) a motor vehicle, the defendant (is not guilty of this offense) (has not aggravated this offense). If you are not so convinced, the defense has not been proven, and if the State has proven each element of the offense beyond a reasonable doubt, the defendant is guilty.

CRIMJIG 29.20**DRIVING UNDER THE INFLUENCE—
AGGRAVATING FACTORS**

Replace the current instruction with the following text:

If you find the defendant guilty of _____, there (is) (are) (an) additional issue(s) you must determine, and (it) (they) will be put to you in the form of questions that will appear on the verdict form. The question(s) (is) (are):

[1] Did the defendant have (a) qualified prior impaired driving incident(s) within ten years immediately preceding the current offense? [A “qualified prior impaired driving incident” includes prior driving impaired convictions and prior impaired driving-related loss of license.]¹ [If you answer “yes” to this question, you must also answer the following question: How many such offenses did the defendant have? If you have a reasonable doubt about how many such offenses the defendant had, you should choose the smaller number.]

[2] Did the defendant have an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense?

[3] Was a child under 16 years of age in the vehicle at the time of the violation? Was the child more than 36 months younger than the defendant?

You will answer (this) (each) question “yes” or “no.” If you have a reasonable doubt as to the answer, you should answer the question(s) “no.”

¹See M.S.A. § 169A.03, subs. 3; definitions, if necessary. 20; 21; and 22, for more complete

COMMENT

Add the following text as the second paragraph to the Comment:

In *State v. Fichtner*, 867 N.W.2d 242, (Minn. App. 2015) the Court of Appeals found that the aggravating factor of having a child under the age of 16 in the vehicle at the time of impaired driving may be used only once to make an aggravating factor. The statute makes no provision permitting the presence of additional children to represent separate aggravating factors.

CRIMJIG 29.21**REFUSAL TO SUBMIT TO TESTING—DEFINED.**

Replace current Jury Instruction with the following text and Comments:

Under Minnesota law, whoever refuses to submit to a chemical test

[1] of the person's breath

[2] of the person's blood or urine as required by a search warrant

under the implied consent law is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 2; Minn. Stat. § 169A.51; Minn. Stat. § 169A.52.

Minn. Stat. § 171.177; Minn. Stat. §§ 626.04–626.18.

CRIMJIG 29.22**REFUSAL TO SUBMIT TO TESTING—ELEMENTS**

Replace current Jury Instruction with the following text and Comments:

The elements of refusals to submit to testing are:

First, a peace officer had probable cause to believe that the defendant drove, operated, or was in physical control of a motor vehicle while under the influence of alcohol. In order to find that the officer had “probable cause,” you must first look at the totality of the circumstances leading to the arrest, based upon the objective facts and circumstances testified to by the arresting officer, as well as the officer’s training and experience. If you find those circumstances would lead a reasonable officer to have an honest and strong suspicion that the defendant was driving, operating, or in physical control of a motor vehicle while under the influence of alcohol, then the arresting officer had probable cause.

[1] Second, a peace officer placed the defendant under lawful arrest for driving while impaired. An arrest is “lawful” when an officer has reason to believe the defendant is in violation of the law and an officer can explain the reason.

[2] Second, the defendant was involved in a motor vehicle accident or collision resulting in (property damage) (personal injury to the defendant) (personal injury to another) (death).

[3] Second, the defendant refused to take a screening test (also called a preliminary screening or preliminary breath test). This test is administered to aid the officer in deciding whether an arrest should be made.

[4] Second, the defendant took a screening test (also called a preliminary screening or preliminary breath test) and the results indicated an alcohol concentration of 0.08 or more.

Third, the defendant was given the implied consent advisory by the peace officer.

[1] Fourth, the defendant was requested by a peace officer to submit to a chemical test of the defendant's breath.

[2] Fourth, the defendant was requested by a peace officer to submit to a chemical test of the defendant's (blood) (urine) as required by a search warrant.

Fifth, the defendant refused to submit to the test. [A failure to complete the entire test is a refusal. (In the case of a breath test, the entire test must consist of one adequate breath sample analysis, one calibration standard analysis, and a second adequate breath sample analysis.)]

[Insert appropriate elements from CRIMJIG 29.20 (Aggravating Factors), if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), *the defendant may stipulate to any prior conviction(s) and remove that element from the jury's consideration.*]

Sixth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 169A.20, subd. 2; Minn. Stat. § 169A.51; Minn. Stat. § 169A.52.

Minn. Stat. § 171.177; Minn. Stat. §§ 626.04–626.18.

CRIMJIG 29.25

RECKLESS DRIVING—DEFINED

COMMENT

Replace the current first paragraph of the Comment with the following text:

M.S.A. § 169.13, subd. 1(a) and subd. 3.

CRIMJIG 29.26

RECKLESS DRIVING—ELEMENTS

COMMENT

Delete the first paragraph of the Comment.

CRIMJIG 29.39**FAILURE TO STOP AND GIVE INFORMATION—
ATTENDED VEHICLE—NO PERSONAL INJURY—
DEFINED**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, whoever is the driver of any vehicle involved in a collision with a vehicle driven or attended by any person and fails to immediately stop such vehicle at the scene of an accident, or as close thereto as possible, fails to forthwith return to the scene, or fails to remain at the scene of the accident until fulfilling the statutory requirements as to the giving of information, is guilty of a crime.

COMMENT

Minn. Stat. § 169.09, subd. 2.

CRIMJIG 29.40**FAILURE TO STOP AND GIVE INFORMATION—
ATTENDED VEHICLE—NO PERSONAL INJURY—
ELEMENTS**

Replace Current Instruction and Comment with the following text:

The elements of this crime are:

First, the defendant was the driver of a vehicle involved in a collision with a vehicle driven or attended by another person.

“Attended” means that there was a person in, upon, or in immediate proximity to the vehicle.

[1] Second, the defendant knew or had reason to know the collision resulted in damage to the attended vehicle.

“To know” requires only that the defendant believes that the specified fact exists.¹

Third, the defendant failed to immediately stop at the scene of the collision, or as close to the scene as possible, (and return to) and remain at the scene until the defendant had provided (his) (her) name, address, date of birth, and vehicle registration number [and exhibited (his) (her) driver’s license or permit].

[2] Second, the defendant failed to stop the vehicle at the scene of the collision, or as close to the scene as possible, and reasonably investigate what was struck.

(Third) (Fourth), the defendant’s act took place on (or about) _____, in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 169.09, subd. 2.

Minn. Stat. § 169.09 applies to the operation of snowmobiles anywhere in the state or on the ice of any boundary water of the state. Minn. Stat. § 84.87, subd. 1(f).

Minn. Stat. § 169.09, subd. 15, provides that it is an affirmative defense to a prosecution under this subdivision if the driver left the scene of the accident to take a person suffering immediately demonstrable bodily injury in the accident to receive emergency medical care. The driver must also have given notice as required by Minn. Stat. § 169.09, subd. 6, to a law enforcement agency as soon as reasonably feasible after the emergency care has been undertaken.

¹Minn. Stat. § 609.02, subd. 9 (2).

CRIMJIG 29.43**FAILURE TO STOP AND GIVE INFORMATION—
UNATTENDED VEHICLE—DEFINED**

Replace current Jury Instruction with the following text:

Under Minnesota law, whoever is the driver of any vehicle involved in a collision that results in damage to any unattended vehicle and fails to stop immediately, locate and notify the driver or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, report the same to a peace officer, or leave in a conspicuous place in or secured to the unattended vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking, is guilty of a crime.

CRIMJIG 29.44**FAILURE TO STOP AND GIVE INFORMATION—
UNATTENDED VEHICLE—ELEMENTS**

Replace current Jury Instruction with the following text:

The elements of failing to stop and give information after a collision involving an unattended vehicle are:

First, the defendant was the driver of a vehicle that collided with or caused a collision with an unattended vehicle. [“Unattended” means the vehicle was not occupied, and there was no person in the immediate vicinity looking after the vehicle.]

[1] Second, the defendant failed to stop the vehicle at the scene of the collision, or as close to the scene as possible and reasonably investigate what was struck.

[2] Second, the defendant knew or had reason to know the collision resulted in damage to the unattended vehicle.

Third, the defendant failed to stop immediately and provide (his) (her) name and address and the name and address of the owner of the vehicle (he) (she) was driving in any of the following ways:

[a] by locating and notifying the driver or owner of the unattended vehicle.

[b] by reporting this information to a police officer.

[c] by leaving written notice containing this information in a conspicuous place in or secured to the unattended vehicle.

[Third] [Fourth], the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been

proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 29.57**FAILURE TO YIELD—PEDESTRIANS—ABSENCE OF SIGNALS—DEFINED**

Replace current Jury Instruction with the following text and Comment:

Under Minnesota law, the driver of a vehicle who fails to stop to yield the right-of-way to a pedestrian crossing the roadway within a marked crosswalk or at an intersection with no marked crosswalk where traffic-control signals are not in place or in operation, is guilty of a crime.

COMMENT

Minn. Stat. § 169.21, subd. 2.

CRIMJIG 29.58**FAILURE TO YIELD—PEDESTRIANS—ABSENCE OF SIGNALS—ELEMENTS**

Replace current Jury Instruction with the following text and Footnote:

The elements of failure to yield to a pedestrian are:

First, the defendant drove a vehicle. “Vehicle” means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant approached a pedestrian who was crossing the roadway (within a marked crosswalk) (within any crosswalk at an intersection) where traffic-control signals were not in (place) (operation).

Third, the defendant failed to stop to yield the right-of way. [No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. The State must prove beyond a reasonable doubt that it was not impossible for the defendant to yield.]¹

Fourth, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

¹The bracketed language should only be used if the defendant has met his or her burden of production. See Minn. Stat. § 169.21, subd. 2(a); *State*

v. Kramer, 668 N.W.2d 32 (Minn. App. 2003); *State v. Auchampach*, 540 N.W.2d 808 (Minn. 1995).

CRIMJIG 29.63**OPERATING AIRCRAFT WHILE UNDER THE
INFLUENCE OF A COMBINATION OF ALCOHOL
AND/OR A CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—DEFINED [Retitled]**

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(3).

CRIMJIG 29.64**OPERATING AIRCRAFT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR A HAZARDOUS SUBSTANCE—ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (attempted to operate) an aircraft.

An “aircraft” is any contrivance used or designed for navigation of or flight in air [but excludes parachutes].

To “operate” includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance.)

[An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.¹ [_____ is not a controlled substance.]]

[“Drug” means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]²

[The term “drug” also means any compound, sub-

stance, or derivative that, when introduced into the body, induces an effect similar to that of _____,³ regardless of whether the substance is marketed for the purpose of human consumption.]⁴

[“Chemical” means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁵

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person’s ability or capacity to operate an aircraft is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”⁶

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

“To know” requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(3).

- 11a. ¹Minn. Stat. § 169A.03, subd. Rules 6800.4210, 4220.
⁴Minn. Stat. § 151.01, subd. 5.
²Minn. Stat. § 151.01, subd. 5. ⁵Minn. Stat. § 151.01, subd. 8.
³Insert name of one or more sub- ⁶See *State v. Stark*, 363 N.W.2d
 stance(s) listed in Schedules I or II. See 53 (Minn. 1985); *State v. Graham*, 222
 Minn. Stat. § 152.02, subds. 2, 3; Minn. N.W. 909 (Minn. 1929).

CRIMJIG 29.70**OPERATING AIRCRAFT WHILE UNDER THE
INFLUENCE OF AN INTOXICATING SUBSTANCE—
DEFINED [Retitled]**

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever operates or attempts to operate an aircraft on or over land or water, or over any boundary water, when the person is under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(6).

CRIMJIG 29.71**OPERATING AIRCRAFT WHILE UNDER THE
INFLUENCE OF AN INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (attempted to operate) an aircraft.

An “aircraft” is any contrivance used or designed for navigation of or flight in air [but excludes parachutes].

To “operate” includes the acts of all crew members with responsibility to operate the aircraft.

Second, at the time the defendant was (operating) (attempting to operate) an aircraft, the defendant was under the influence of an intoxicating substance.

An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.¹ [_____ is not a controlled substance.]

[“Drug” means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]²

[The term “drug” also means any compound, substance, or derivative that, when introduced into the body,

induces an effect similar to that of _____,³ regardless of whether the substance is marketed for the purpose of human consumption.]⁴

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁵

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to operate an aircraft is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁶

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 360.0752, subd. 2(a)(6).

- 11a. ¹Minn. Stat. § 169A.03, subd. Rules 6800.4210, 4220.
²Minn. Stat. § 151.01, subd. 5.
³Insert name of one or more substance(s) listed in Schedules I or II. See 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).
⁴Minn. Stat. § 151.01, subd. 8.
⁵Minn. Stat. § 151.01, subd. 8.
⁶See *State v. Stark*, 363 N.W.2d

CRIMJIG 29.84**OPERATING A SNOWMOBILE/ALL-TERRAIN
VEHICLE WHILE UNDER THE INFLUENCE OF A
COMBINATION OF ALCOHOL AND/OR A
CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—DEFINED [*Retitled*]**

Replace current Jury Instruction with the following new Title, text, and Comment:

Under Minnesota law, whoever ((operates) (is in physical control of)) ((a snowmobile) (an all-terrain vehicle)) within this state or on the ice of any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know that the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. 169A.20, subd. 1b(4); Minn. Stat. § 84.91, subd. 1(c).

CRIMJIG 29.85**OPERATING A SNOWMOBILE/ALL-TERRAIN
VEHICLE WHILE UNDER THE INFLUENCE OF A
COMBINATION OF ALCOHOL AND/OR A
CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant ((operated) (was in physical control of)) ((a snowmobile) (an all-terrain vehicle)).

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.]¹

[A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was ((operating) (in physical control of)) ((a snowmobile) (an all-terrain vehicle)), the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance).

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.² [_____ is not a controlled substance.]]

["Drug" means all medicinal substances and prepara-

tions, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]³

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,⁴ regardless of whether the substance is marketed for the purpose of human consumption.]⁵

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁶

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) (a snowmobile) (an all-terrain vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁷

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. 169A.20, subd. 1b(4); Minn. Stat. § 84.91, subd. 1(c).

¹*State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term “operating” in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

²Minn. Stat. § 169A.03, subd. 11a.

³Minn. Stat. § 151.01, subd. 5.

⁴Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subs. 2, 3; Minn. Rules 6800.4210, .4220.

⁵Minn. Stat. § 151.01, subd. 5.

⁶Minn. Stat. § 151.01, subd. 8.

⁷See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.90**OPERATING A SNOWMOBILE/ALL-TERRAIN VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING SUBSTANCE—DEFINED [Retitled]**

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever ((operates) (is in physical control of)) ((a snowmobile) (an all-terrain vehicle)) within this state or on the ice of any boundary water, when the person is under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1b(3); Minn. Stat. § 84.91, subd. 1(3).

CRIMJIG 29.91**OPERATING A SNOWMOBILE/ALL-TERRAIN
VEHICLE WHILE UNDER THE INFLUENCE OF AN
INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant ((operated) (was in physical control of)) ((a snowmobile) (an all-terrain vehicle)).

[“To operate” means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.]¹

[A person is in “physical control” of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was ((operating) (in physical control of)) ((a snowmobile) (an all-terrain vehicle)), the defendant was under the influence of a an intoxicating substance.

An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.² [_____ is not a controlled substance.]

[“Drug” means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or

prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]³

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,⁴ regardless of whether the substance is marketed for the purpose of human consumption.]⁵

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁶

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) (a snowmobile) (an all-terrain vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁷

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been

proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1b(3); Minn. Stat. § 84.91, subd. 1(3).

¹*State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term “operating” in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

²Minn. Stat. § 169A.03, subd. 11a.

³Minn. Stat. § 151.01, subd. 5.

⁴Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subs. 2, 3; Minn. Rules 6800.4210, .4220.

⁵Minn. Stat. § 151.01, subd. 5.

⁶Minn. Stat. § 151.01, subd. 8.

⁷See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.96**OPERATING A MOTORBOAT WHILE UNDER THE INFLUENCE OF A COMBINATION OF ALCOHOL AND/OR A CONTROLLED SUBSTANCE AND/OR AN INTOXICATING SUBSTANCE—DEFINED [Retitled]**

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment,)), is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1a(4); Minn. Stat. § 86B.331, subd. 1(c).

CRIMJIG 29.97**OPERATING A MOTORBOAT WHILE UNDER THE
INFLUENCE OF A COMBINATION OF ALCOHOL
AND/OR A CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water.

[A person “operates” a motorboat by navigating or otherwise using the motorboat.]

[A person is in “physical control” of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.]

[A “motorboat” is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.] [A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance).

[An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.¹ [_____ is not a controlled substance.]]

[“Drug” means all medicinal substances and prepara-

tions, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]²

[The term “drug” also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,³ regardless of whether the substance is marketed for the purpose of human consumption.]⁴

[“Chemical” means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁵

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person’s ability or capacity to (operate) (be in physical control of) a motorboat is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”⁶

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

“To know” requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1a(4); Minn. Stat. § 86B.331, subd. 1(c).

11a. ¹Minn. Stat. § 169A.03, subd. 1; Rules 6800.4210, .4220.

²Minn. Stat. § 151.01, subd. 5.

⁴Minn. Stat. § 151.01, subd. 5.

⁵Minn. Stat. § 151.01, subd. 8.

³Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subs. 2, 3; Minn.

⁶See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.102

**OPERATING A MOTORBOAT WHILE UNDER THE
INFLUENCE OF AN INTOXICATING SUBSTANCE—
DEFINED [Retitled]**

*Replace current Jury Instruction with the following new Title, Text, and
Comment:*

Under Minnesota law, whoever (operates) (is in physical control of) a motorboat in operation on the water, when the person is under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment, is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1a(3); Minn. Stat. § 86B.331, subd. 1(c).

CRIMJIG 29.103**OPERATING A MOTORBOAT WHILE UNDER THE
INFLUENCE OF AN INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant (operated) (was in physical control of) a motorboat in operation on the water.

[A person “operates” a motorboat by navigating or otherwise using the motorboat.]

[A person is in “physical control” of a motorboat when the person is present in a motorboat and is in a position to either direct the operation of the motorboat or keep the motorboat in restraint.]

[A “motorboat” is a watercraft propelled in any manner by machinery, including a watercraft temporarily equipped with a detachable motor.]

[A motorboat is not in operation if it is anchored, beached, or securely fastened to a dock or other permanent mooring.]

Second, at the time the defendant was (operating) (in physical control of) a motorboat, the defendant was under the influence of an intoxicating substance.

An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.¹ [_____ is not a controlled substance.]

[“Drug” means all medicinal substances and prepara-

tions, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]²

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,³ regardless of whether the substance is marketed for the purpose of human consumption.]⁴

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁵

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) a motorboat is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁶

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

"To know" requires only that the actor believes that the specified fact exists.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1a(3); Minn. Stat. § 86B.331, subd. 1(c).

11a. ¹Minn. Stat. § 169A.03, subd. Rules 6800.4210, 4220.

²Minn. Stat. § 151.01, subd. 5.

⁴Minn. Stat. § 151.01, subd. 5.

⁵Minn. Stat. § 151.01, subd. 8.

³Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subs. 2, 3; Minn.

⁶See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.110**OPERATING AN OFF-HIGHWAY MOTORCYCLE/
OFF-ROAD VEHICLE WHILE UNDER THE
INFLUENCE OF A COMBINATION OF ALCOHOL
AND/OR A CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—DEFINED [Retitled]**

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever ((operates) (is in physical control of)) ((an off-highway motorcycle) (off-road vehicle)) within this state or on the ice of any boundary water, when the person is under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment), is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1c(4).

CRIMJIG 29.111

**OPERATING AN OFF-HIGHWAY MOTORCYCLE/
OFF-ROAD VEHICLE WHILE UNDER THE
INFLUENCE OF A COMBINATION OF ALCOHOL
AND/OR A CONTROLLED SUBSTANCE AND/OR AN
INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant ((operated) (was in physical control of)) ((an off-highway motorcycle) (off-road vehicle)).

["Off-highway motorcycle" means a motorized, off-highway vehicle traveling on two wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control, including a vehicle that is registered under chapter 168 for highway use if it is also used for off-highway operation on trails or unimproved terrain.]¹ ["Off-road vehicle" means a motor-driven recreational vehicle capable of cross-country travel on natural terrain without benefit of a road or trail. Off-road vehicle does not include a snowmobile; an all-terrain vehicle; a motorcycle; a watercraft; a farm vehicle being used for farming; a vehicle used for military, fire, emergency, or law enforcement purposes; a construction or logging vehicle used in the performance of its common function; a motor vehicle owned by or operated under contract with a utility, whether publicly or privately owned, when used for work on utilities; a commercial vehicle being used for its intended purpose; snow-grooming equipment when used for its intended purpose; or an aircraft.]²

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.]³

[A person is in "physical control" of a vehicle when the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was [(operating) (in physical control of)] [(an off-highway motorcycle) (off-road vehicle)], the defendant was under the influence of a combination of (alcohol) (and) (a controlled substance) (and) (an intoxicating substance).

[An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.⁴ [_____ is not a controlled substance.]]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]⁵

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,⁶ regardless of whether the substance is marketed for the purpose of human consumption.]⁷

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁸

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as

a result of ingesting the substance, the person's ability or capacity to (operate) (be in physical control of) (an off-highway motorcycle) (off-road vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁹

[Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

"To know" requires only that the actor believes that the specified fact exists.

[Third] [Fourth], the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury's consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1c(4).

¹Minn. Stat. § 84.787, subd. 7.

²Minn. Stat. § 84.797, subd. 7.

³*State v. Henderson*, 907 N.W.2d

623 (Minn. 2018) (holding term "operating" in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a mo-

tor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

⁴Minn. Stat. § 169A.03, subd.

11a.

⁵Minn. Stat. § 151.01, subd. 5.

⁶Insert name of one or more sub-

stance(s) listed in Schedules I or II. *See* Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

⁷Minn. Stat. § 151.01, subd. 5.

⁸Minn. Stat. § 151.01, subd. 8.

⁹*See State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.116**OPERATING AN OFF-HIGHWAY MOTORCYCLE/
OFF-ROAD VEHICLE WHILE UNDER THE
INFLUENCE OF AN INTOXICATING SUBSTANCE—
DEFINED [Retitled]**

Replace current Jury Instruction with the following new Title, Text, and Comment:

Under Minnesota law, whoever [(operates) (is in physical control of)] [(an off-highway motorcycle) (off-road vehicle)] within this state or on the ice of any boundary water, when the person is under the influence of an intoxicating substance knowing or having reason to know the substance has the capacity to cause impairment is guilty of a crime.

COMMENT

Minn. Stat. § 169A.20, subd. 1c(3).

CRIMJIG 29.117**OPERATING AN OFF-HIGHWAY MOTORCYCLE/
OFF-ROAD VEHICLE WHILE UNDER THE
INFLUENCE OF AN INTOXICATING SUBSTANCE—
ELEMENTS [Retitled]**

Replace current Jury Instruction with the following new Title, Text, Footnote, and Comment:

The elements of this crime are:

First, the defendant ((drove) (operated) (was in physical control of)) ((an off-highway motorcycle) (off-road vehicle)).

["Off-highway motorcycle" means a motorized, off-highway vehicle traveling on two wheels and having a seat or saddle designed to be straddled by the operator and handlebars for steering control, including a vehicle that is registered under chapter 168 for highway use if it is also used for off-highway operation on trails or unimproved terrain.]¹

["Off-road vehicle" means a motor-driven recreational vehicle capable of cross-country travel on natural terrain without benefit of a road or trail. Off-road vehicle does not include a snowmobile; an all-terrain vehicle; a motorcycle; a watercraft; a farm vehicle being used for farming; a vehicle used for military, fire, emergency, or law enforcement purposes; a construction or logging vehicle used in the performance of its common function; a motor vehicle owned by or operated under contract with a utility, whether publicly or privately owned, when used for work on utilities; a commercial vehicle being used for its intended purpose; snow-grooming equipment when used for its intended purpose; or an aircraft.]²

["To operate" means to perform any act that causes a vehicle to function or controls the functioning of a vehicle.]³

[A person is in "physical control" of a vehicle when

the person is present in a vehicle and is in a position to either direct the movement of the vehicle or keep the vehicle in restraint. It is not necessary for the engine to be running in order for a person to be in physical control of a vehicle.]

Second, at the time the defendant was ((driving) (operating) (in physical control of)) ((an off-highway motorcycle) (off-road vehicle)), the defendant was under the influence of an intoxicating substance.

An “intoxicating substance” means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.⁴ [_____ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]⁵

[The term “drug” also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,⁶ regardless of whether the substance is marketed for the purpose of human consumption.]⁷

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]⁸

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity to (drive) (operate) (be in physical control of) (an

off-highway motorcycle) (off-road vehicle) is impaired, then the person is under the influence of that substance.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”⁹

Third, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.

“To know” requires only that the actor believes that the specified fact exists.

Fourth, the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

[Insert appropriate elements from CRIMJIG 29.20 Aggravating Factors if applicable. Note that under *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984), the defendant may stipulate to any prior convictions and remove that element from the jury’s consideration.]

COMMENT

Minn. Stat. § 169A.20, subd. 1c(3).

¹Minn. Stat. § 84.787, subd. 7.

²Minn. Stat. § 84.797, subd. 7.

³*State v. Henderson*, 907 N.W.2d 623 (Minn. 2018) (holding term “operating” in Minn. Stat. § 609.2113, subd. 1, refers to any act that causes a mo-

tor vehicle to function or controls the functioning of a motor vehicle, including the act of a passenger grabbing the steering wheel of a moving vehicle).

⁴Minn. Stat. § 169A.03, subd. 11a.

⁵Minn. Stat. § 151.01, subd. 5.

⁶Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subds. 2, 3; Minn. Rules 6800.4210, .4220.

⁷Minn. Stat. § 151.01, subd. 5.

⁸Minn. Stat. § 151.01, subd. 8.

⁹See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

CRIMJIG 29.124

OVERTAKING AND PASSING A VEHICLE STOPPED
AT A CROSSWALK TO PERMIT A PEDESTRIAN TO
CROSS A ROADWAY—DEFINED [New]

Under Minnesota law, when any vehicle is stopped at a marked crosswalk or at an intersection with no marked crosswalk to permit a pedestrian to cross the roadway, a driver of any other vehicle approaching from the rear that overtakes and passes the stopped vehicle is guilty of a crime.

COMMENT

Minn. Stat. § 169.21, subd. 2(b).

CRIMJIG 29.125**OVERTAKING AND PASSING A VEHICLE STOPPED
AT A CROSSWALK TO PERMIT A PEDESTRIAN TO
CROSS A ROADWAY—ELEMENTS [New]**

The elements of overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway are:

First, a vehicle was stopped at a marked crosswalk or at an intersection with no marked crosswalk to permit a pedestrian to cross the roadway. "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Second, the defendant was the driver of another vehicle approaching from the rear.

Third, the vehicle driven by the defendant overtook and passed the stopped vehicle.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

COMMENT

Minn. Stat. § 169.21, subd. 2(b).

CHAPTER 32
WEAPONS CRIMES

CRIMJIG 32.02

**USE/POSSESSION OF DANGEROUS WEAPON—
ELEMENTS**

n. 2.

Replace Footnote two with the following text:

See Minn. Stat. § 123B.41, subd. 9 school.”
for the definition of a “nonpublic

CRIMJIG 32.04**DRIVE-BY SHOOTING—ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.06**SHOOTING AT TRANSIT VEHICLE OR FACILITY—
ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.08**INTENTIONAL DISCHARGE OF A FIREARM—
ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

Replace current Jury Instruction with the following text, Footnote, and Comment:

The elements of intentional discharge of a firearm are:

First, the defendant discharged a firearm.

Second, the defendant acted intentionally in discharging the firearm.

Third, the discharge of the firearm was under circumstances that endangered the safety of (_____) (another person).

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Remove Footnote 1.

COMMENT

Replace current Comments with the following:

Minn. Stat. § 609.66, subd. 1a(a)(2).

CRIMJIG 32.10**RECKLESS DISCHARGE OF A FIREARM WITHIN A
MUNICIPALITY—ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

n. 1.

Replace Footnote one with the following text:

See Minn. Stat. § 123B.41, subd. 9 school.”
for the definition of a “nonpublic

CRIMJIG 32.12**FAILURE TO RENDER AID FROM FIREARM
INJURY—ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.14

**FAILURE TO RENDER AID FROM FIREARM
INJURY—WITNESS TO—ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.16**INELIGIBLE PERSON IN POSSESSION OF (A FIREARM) (AMMUNITION)—DEFINED [Retitled]**

Replace Current Instruction and Comment with the following text:

Under Minnesota law, (an ineligible person) (whoever has been (convicted of) (adjudicated delinquent for) (convicted as an extended juvenile jurisdiction juvenile of) a crime of violence and) who ships, transports, possesses, or receives a firearm is guilty of a crime.

COMMENT

Minn. Stat. § 609.165, subd. 1b.

All reference to crimes of violence should be removed when the defendant stipulates to ineligibility.

CRIMJIG 32.17**INELIGIBLE PERSON IN POSSESSION OF (A FIREARM) (AMMUNITION)—ELEMENTS' [Retitled]**

Replace Current Instruction and Comment with the following new title and text:

The elements of this crime are:

First, the defendant knowingly (shipped) (transported) (possessed) received (a firearm) (ammunition).

"To know" requires only that the defendant believes that the specified fact exists.²

[A "firearm" is a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force.]³

["Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. Ammunition does not include ornaments, curiosities, or souvenirs constructed from or resembling ammunition or ammunition components that are not operable as ammunition.]⁴

A person possesses a firearm if it is on (his) (her) person. A person also possesses a firearm if it was in a place under (his) (her) exclusive control to which other people did not normally have access, or, if found in a place to which others had access, (he) (she) knowingly exercised dominion and control over it.⁵

[1] Second, the defendant is ineligible to possess (a firearm) (ammunition).

The parties have agreed, and therefore you must accept, that the defendant was, on all relevant dates, ineligible to possess a (firearm) (pistol) (semi-automatic military-style assault weapon) (ammunition).⁶

[2] Second, the defendant has been (convicted of) (adjudicated delinquent for) (convicted as an extended jurisdiction juvenile of) a crime of violence.

You are instructed that _____ is a crime of violence.⁷

Third, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 609.165, subd. 1b.

All references to the reason for ineligibility should be removed when the defendant stipulates to being an ineligible person.

¹This instruction is to be used for charges under Minn. Stat. § 609.165, and not for charges under Minn. Stat. § 624.713.

²Minn. Stat. § 609.02, subd. 9 (2).

³See *State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020) (distress flare launcher is not a weapon, thus not a "firearm" though it expels a projectile by explosive force). Note that "firearm" is not defined in Minn. Stat. § 609.165, definitional criminal statutes applicable to this statute or related case law. Firearm is defined by Minn. Stat. § 97A.015, subd. 19, applicable to game-and-fish laws, as a "gun that discharges shot or a projectile by means of an explosive, a gas or compressed air," and by Minn. Stat. § 609.666, subd. 1(a), applicable to negligent

storage of firearms, as "a device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion or force of combustion."

⁴Minn. Stat. § 609.02, subd. 17.

⁵See *State v. Florine*, 226 N.W. 2d 609, 611 (Minn. 1975).

⁶Under *State v. Davidson*, 351 N.W. 2d 8, 11 (Minn. 1984), the defendant is entitled to stipulate to the existence of the prior conviction, such a stipulation constitutes a waiver of jury trial on this element and defendant's waiver must be made personally and on the record. Under such circumstances, this option for the second element should be used.

⁷"Crimes of violence" are listed in Minn. Stat. § 624.712, subd. 5.

CRIMJIG 32.19**POSSESSION OF A PISTOL OR SEMI-AUTOMATIC
MILITARY-STYLE ASSAULT WEAPON BY
CHARGED INDIVIDUAL—ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.20**POSSESSION OF (FIREARM) (PISTOL) (SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON) (AMMUNITION) BY AN INELIGIBLE PERSON—
DEFINED' [Retitled]**

¹This instruction is to be used for charges under Minn. Stat. § 624.713, and not for charges under Minn. Stat. § 609.165.

Replace Current Instruction and Comment with the following text:

Under Minnesota law, (an ineligible person who) (whoever)

- [1] is under the age of 18 years who**
- [a] is not in the actual presence or under the direct supervision of the parent or guardian,**
 - [b] is not acting for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision,**
 - [c] is not acting for the purpose of instruction, competition, or target practice, on a firing range approved by the chief of police or county sheriff and under direct supervision, and**
 - [d] has not successfully completed a course designed to teach marksmanship and pistol safety approved by the Commissioner of Natural Resources**
- [2] has been convicted or adjudicated delinquent or convicted as an extended jurisdiction juvenile in this state or elsewhere for committing a crime of violence**
- [3] is or has ever been confined in Minnesota or elsewhere to a treatment facility as mentally ill, mentally retarded, or mentally ill and dangerous to the public, or has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless the**

person possesses a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the person is no longer suffering from this disability

- [4] has been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor controlled substance crime, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of a controlled substance law in this state or a similar law in another state
- [5] has ever been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana
- [6] has been confined or committed to a treatment facility in Minnesota or elsewhere as chemically dependent, unless that person has completed treatment or obtained a judicial restoration of the ability to possess a firearm and ammunition
- [7] is a peace officer who has been informally admitted to a treatment facility for chemical dependency, unless the officer possesses a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility
- [8] has been charged in adult or juvenile court with committing a crime of violence, has been placed in a pre-trial diversion program by the court before disposition, and has not completed the diversion program, and the charge of committing the violence has not been dismissed
- [9] has been convicted of assault in the fifth degree in Minnesota or convicted in another state of committing an offense similar to assault in the fifth degree, against a family or household member, unless three years have elapsed since the date of conviction and

during that time has not been convicted of any other violation of assault in the fifth degree

- [10]** has been convicted in Minnesota or elsewhere of assaulting a family or household member, was found by the court to have used a firearm in any way in the commission of the assault, and is prohibited by court order from possessing a firearm
- [11]** has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year
- [12]** is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding
- [13]** is an unlawful user of controlled substances
- [14]** has been judicially committed to a treatment facility in Minnesota or elsewhere as “mentally ill,” “mentally retarded,” or “mentally ill and dangerous,”
- [15]** is an alien who is illegally or unlawfully in the United States
- [16]** has been discharged from the armed forces of the United States under dishonorable conditions
- [17]** has renounced the person’s citizenship, having been a citizen of the United States
- [18]** has been convicted, in this state or any other state, of (), a gross misdemeanor, unless three years have passed since the date of conviction and, during that time, the defendant has not been convicted of any other listed crimes
- [19]** who has been convicted of a violation of assault in the fifth degree against a family or household member, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another listed violation

[20] is subject to an order for protection

[and] knowingly possesses a (firearm) (pistol) (semi-automatic military-style assault weapon) (ammunition)

is guilty of a crime.

COMMENT

Minn. Stat. § 624.713, subd. 2.

All reference to the reasons for ineligibility should be removed when the defendant stipulates to being an ineligible person.

CRIMJIG 32.21**POSSESSION OF (FIREARM) (PISTOL) (SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON) (AMMUNITION) BY AN INELIGIBLE PERSON—ELEMENTS¹ [Retitled]**

¹This instruction is to be used for charges under Minn. Stat. § 624.713, and not for charges under Minn. Stat. § 609.165.

Replace Current Instruction and Comment with the following new title and text:

The elements of this crime are:

First, the defendant knowingly possessed a (firearm) (pistol) (semi-automatic military-style assault weapon) (ammunition).

“To know” requires only that the defendant believes that the specified fact exists.²

A person possesses a firearm if it is on (his) (her) person. A person also possesses a firearm if it was in a place under (his) (her) exclusive control to which other people did not normally have access, or, if found in a place to which others had access, (he) (she) knowingly exercised dominion and control over it.³

[A “firearm” is a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force.]⁴

[A “pistol” is a weapon designed to be fired by the use of a single hand with an overall length of less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun, or having a barrel of a length less than 16 inches in the case of a rifle, from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of a flamma-

ble explosive substance for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor.]"⁵

["Semi-automatic military-style assault weapon" means (——).]"⁶

["Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. Ammunition does not include ornaments, curiosities, or souvenirs constructed from or resembling ammunition or ammunition components that are not operable as ammunition.]"⁷

- [1] Second, the defendant is ineligible to possess a (firearm) (pistol) (semi-automatic military-style assault weapon) (ammunition).

The parties have agreed, and therefore you must accept, that the defendant was, on all relevant dates, ineligible to possess a (firearm) (pistol) (semi-automatic military-style assault weapon) (ammunition)."⁸

- [2] Second, the defendant

[a] was under the age of 18 years⁹ and

[i] was not in the actual presence or under the direct supervision of the parent or guardian,

[ii] was not acting for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision,

[iii] was not acting for the purpose of instruction, competition, or target practice, on a firing range approved by the chief of police or county sheriff and under direct supervision, and

[iv] had not successfully completed a course

designed to teach marksmanship and pistol safety approved by the Commissioner of Natural Resources,

- [b] has been convicted or adjudicated delinquent or convicted as an extended jurisdiction juvenile in this state or elsewhere for committing a crime of violence. You are instructed that _____ is a crime of violence.¹⁰
- [c] was or had been confined or committed in Minnesota or elsewhere in a treatment facility as mentally ill, mentally retarded, or mentally ill and dangerous to the public, has been found incompetent to stand trial or not guilty by reason of mental illness, and did not possess a certificate of a medical doctor or psychiatrist licensed in Minnesota or other satisfactory proof that the person was no longer suffering from this disability. [It is a defense to this offense that the defendant's ability to possess firearms has been restored by a judicial proceeding.]
- [d] had been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor controlled substances crime, unless three years have elapsed since the date of conviction and, during that time, the defendant has not been convicted of any other such violation of Minnesota controlled substance law or a similar law of another state.
- [e] had been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana.¹¹ [It is a defense to this offense that the defendant's ability to possess firearms has been restored by judicial proceedings.]
- [f] had been confined or committed to a treatment facility in Minnesota or elsewhere as chemically

dependent, had not completed treatment, and had not obtained a judicial restoration of the ability to possess a firearm and ammunition.

[g] was a peace officer who had been informally admitted to a treatment facility for chemical dependency, and the officer did not possess a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility.

[h] had been charged in adult or juvenile court with committing a crime of violence, was placed in a pretrial diversion program by the court before disposition, and had not completed the diversion program, and the charge of committing the violence had not been dismissed.

[i] had been convicted of assault in the fifth degree in Minnesota or convicted in another state of committing an offense similar to assault in the fifth degree against a family or household member, unless three years had elapsed since the date of conviction, and during that time had not been convicted of any other violation of assault in the fifth degree.

[j] had been convicted in Minnesota or elsewhere of assaulting a family or household member, was found by the court to have used a firearm in any way in the commission of the assault, and was prohibited by court order from possessing a firearm.

[k] had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. [Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this definition, unless such pardon, expunge-

ment, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.]¹²

- [l] was a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.
- [m] was an unlawful user of controlled substances.
- [n] had been judicially committed to a treatment facility in Minnesota or elsewhere as “mentally ill,” “mentally retarded,” or “mentally ill and dangerous.”
- [o] was an alien who was illegally or unlawfully in the United States.
- [p] had been discharged from the armed forces of the United States under dishonorable conditions.
- [q] had renounced the person’s citizenship, having formerly been a citizen of the United States,
- [r] has been convicted, in this state or any other state, of _____,¹³ a gross misdemeanor, unless three years have passed since the date of conviction and, during that time, the defendant has not been convicted of any other listed crimes.
- [s] has been convicted of a violation of (section Minn. Stat. § 609.224) (assault in the fifth degree) if the court determined that the assault was against a family or household member¹⁴, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of Minn. Stat. § 609.224 (fifth degree assault) or a violation listed in section Minn. Stat. § 609.229 (crimes committed for the benefit of a gang); Minn. Stat. § 609.2231, subd. 4 (assault motivated by bias); Minn. Stat.

§ 609.225 (false imprisonment); Minn. Stat. § 609.378 (neglect or endangerment of a child); Minn. Stat. § 609.582, subd. 4 (fourth degree burglary); Minn. Stat. § 609.665 (setting a spring trap); Minn. Stat. § 609.72 (riot); or Minn. Stat. § 609.749 (stalking).

[t] was subject to an order for protection.¹⁵

Third, the defendant's act took place on (or about) ____ in ____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 624.713, subd. 2.

All references to the reason for ineligibility should be removed when the defendant stipulates to being an ineligible person.

"Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Blakely v. Washington*, 542 U.S. 296, 301 (2004). The fact of prior conviction may include judicial assessment of aspects of the conviction that are based upon facts admitted or found by a jury in that case, such as whether the prior conviction is a felony, *State v. Outlaw*, 748 N.W.2d 349, 355 (Minn. Ct. App. 2008), a heinous crime, *State v. Wiskow*, 774 N.W.2d 612, 617 (Minn. Ct. App. 2009), but a "qualitative assessment of behavior" or a "comparison and weighing of bad conduct" regarding the current offense must be submitted to the jury. *State v. Her*, 862 N.W. 2d 692, 699 (Minn. 2015) (judicial determination of sex offender risk-level assessment improper).

²Minn. Stat. § 609.02, subd. 9 (2).

³*State v. Florine*, 226 N.W. 2d 609, 611 (Minn. 1975).

⁴*See State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020).

⁵Minn. Stat § 624.712, subd. 2.

⁶*See* Minn. Stat. § 624.712, subd. 7, for complete definition of "semi-automatic, military-style assault weapon."

⁷Minn. Stat. § 609.02, subd. 17.

⁸Under *State v. Davidson*, 351

N.W. 2d 8, 11 (Minn. 1984), the defendant is entitled to stipulate to the existence of the prior conviction, such a stipulation constitutes a waiver of jury trial on this element and defendant's waiver must be made personally and on the record. Under such circumstances, this option for the second element should be used.

⁹Note the prohibition concerning a person under the age of 18 applies only to pistols and semi-automatic military-style assault weapons, but allows possession of other firearms and ammunition.

¹⁰"Crimes of violence" are listed in Minn. Stat. § 624.712, subd. 5.

¹¹As defined in Minn. Stat. § 152.01.

¹²See Minn. Stat. § 624.712, subd. 10.

¹³See Minn. Stat. § 624.713, subd. 1(k), for a list of the gross misdemeanor crimes.

¹⁴Minn. Stat. § 609.224, subd. 3.

¹⁵Either under Minn. Stat. § 260C.201, subd. 3(d) or Minn. Stat. § 518B.01, subd. 6(g).

CRIMJIG 32.24

SALE/POSSESSION OF A FIREARM SILENCER— DEFINED

Replace the current jury instruction with the following language:

Under Minnesota law, whoever (sells) (possesses) a suppressor that is not lawfully possessed under federal law is guilty of a crime.

CRIMJIG 32.25**SALE/POSSESSION OF A FIREARM SILENCER—
ELEMENTS**

Replace the current jury instruction with the following text, Footnote, and Comments:

The elements of (sale) (possession) of a firearm silencer are:

First, the defendant (sold) (possessed) a suppressor that was not lawfully possessed under federal law. “Suppressor” means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer, or firearm muffler, and any part intended only for use in such assembly or fabrication.

Second, the defendant intentionally (possessed) (sold) the suppressor.

[Insert CRIMJIG 32.42 if possession is constructive.]

[Third, the defendant (sold) (possessed) the device in a (school) (park) (public housing) zone? [A “school zone” is any property owned, leased, or controlled by a school district or an organization operating a nonpublic school’ where an elementary, middle, or secondary school, secondary vocational center, or other school providing educational services for grades one through twelve is located or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided.] [A “park zone” is an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. Park zone includes the area within (300 feet) (or) (one city block,) (whichever distance is greater,) of the park boundary.] [A “public housing zone” is a public housing project or development administered by a local housing agency, plus the area within (300

feet of the property’s boundary,) (or) (one city block,) (whichever distance is greater).]

[Third] [Fourth], the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

In cities where no grid system is present, the term “one city block” does not apply and the transaction must take place within 300 feet of the park for the statute to apply. See *State v. Estrella*, 700 N.W.2d 496 (Minn. App. 2005).

When land surrounding a public park is divided into rectangular blocks bounded by city streets, the area “within one city block . . . of the park boundary” include the entire area of block adjacent to the park. *State v. Carufel*, 783 N.W.2d 539 (Minn. 2010) (a controlled substance case). This holding would presumably also apply to a school zone or public housing zone.

¹See Minn. Stat. § 123B.41, subd. _____ school.”
9 for the definition of a “nonpublic

CRIMJIG 32.27

FURNISHING FIREARMS TO MINORS—ELEMENTS

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.36**POSSESSION OF A PISTOL WITHOUT A PERMIT—
DEFINED**

Replace current Jury Instruction with the following text and Comment:

Under Minnesota law, whoever, other than a licensed peace officer, carries, knowingly holds, or possesses a pistol (in a motor vehicle) (in a snowmobile) (in a boat) (on or about the person's clothes or the person) (in a public place or public area), without having first obtained a permit to carry the pistol, is guilty of a crime.

COMMENT

Minn. Stat. § 624.714, subd. 1.

CRIMJIG 32.37**POSSESSION OF A PISTOL WITHOUT A PERMIT—
ELEMENTS**

Replace current Jury Instruction with the following text, Footnotes, and Comments:

The elements of carrying a pistol without a permit are:

First, the defendant was not a licensed peace officer.

Second, the defendant knowingly¹ carried, held, or possessed a pistol (in a motor vehicle) (in a snowmobile) (in a boat) (on or about the person's clothing or the person) (in a public place or public area).

Third, the defendant did not possess a permit issued or recognized by Minnesota to carry the pistol. [Minnesota recognizes permits issued by _____.]² The statutes of Minnesota provide that a permit to carry a pistol is not required of a person who _____.³

Fourth, the defendant's act took place on (or about) _____ in _____ County, Minnesota.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 624.714, subd. 1.

For purposes of Minn. Stat. § 624.714, subd. 9(a) (1998), which established an exception to the requirement that an individual must have a permit to possess a pistol, a person's "place of business" does not include a vehicle used by a courier company's employee. *State v. Palmer*, 636 N.W.2d 810 (Minn. App. 2001).

Conviction of a second or subsequent violation constitutes a felony. In appropriate cases a special interrogatory may be necessary for the

jury as to the existence of the prior conviction. If the defendant so elects, the defendant may judicially admit the prior conviction to prevent that information from being presented to the jury. *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984).

¹In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of Minn. Stat. § 624.714, subd. 1a. In reliance on *Ndikum*, the Committee added the knowledge element as the legislature's silence on the issue does not suggest that it intended to do away with the mens rea requirement.

²See Minn. Stat. § 624.714, subd.

16 (providing for recognition of permits from other states).

³Exceptions to the requirement to carry a permit are found at Minn. Stat. § 624.714, subd. 9 and subd. 23. In those cases in which the defendant raises a defense under those provisions, it is the burden of the prosecution to prove beyond a reasonable doubt that those provisions do not apply.

CRIMJIG 32.41**FIREARM SERIAL NUMBER REMOVED—
ELEMENTS**

Caution: This model jury instruction is under review by the CRIMJIGS committee in light of the decision in *State v. Glover*, 952 N.W.2d 190 (Minn. 2020).

CRIMJIG 32.45

**CARRYING A PISTOL IN A PUBLIC PLACE WHILE
(UNDER THE INFLUENCE OF A CONTROLLED
SUBSTANCE) (UNDER THE INFLUENCE OF
ALCOHOL) (HAS A BLOOD ALCOHOL
CONCENTRATION OF 0.10 OR MORE) (HAS A
BLOOD ALCOHOL CONCENTRATION OF LESS
THAN 0.10 BUT MORE THAN 0.04)—DEFINED**

Replace current Jury Instruction with the following Text and Comment:

**Under Minnesota law, whoever knowingly carries a
pistol on or about the person's clothes or person in a public place**

[1] while under the influence of a controlled substance

[2] while under the influence of a combination of controlled substances or a combination of a controlled substance and alcohol

[3] while under the influence of an intoxicating substance, knowing or having reason to know the substance has the capacity to cause impairment,

[4] while under the influence of alcohol

[5] while having a blood alcohol concentration of 0.10 or more

[6] while having a blood alcohol concentration of less than 0.10 but more than 0.04 is guilty of a crime.

COMMENT

Minn. Stat. § 624.7142, subd. 1(1)–(6).

CRIMJIG 32.46**CARRYING A PISTOL IN A PUBLIC PLACE WHILE
(UNDER THE INFLUENCE OF A CONTROLLED
SUBSTANCE) (UNDER THE INFLUENCE OF
ALCOHOL) (HAS A BLOOD ALCOHOL
CONCENTRATION OF 0.10 OR MORE) (HAS A
BLOOD ALCOHOL CONCENTRATION OF LESS
THAN 0.10 BUT MORE THAN 0.04)—ELEMENTS**

Replace current Jury Instruction with the following Text, Footnotes, and Comment:

The elements of this crime are:

First, the defendant knowingly carried a pistol on or about (his) (her) clothes or person.¹

A pistol is carried “on or about” one’s clothes or person if there is a physical nexus between the person and the pistol or if the pistol is carried within arm’s reach of the person.²

Second, at the time of carrying pistol on or about (his) (her) clothes or person, the defendant was in a public place.

Third, at the time, the defendant (was) (had)

[1] under the influence of a controlled substance.³ _____ is a controlled substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, _____.

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person’s ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as “under the influence.” When a person is so affected by

the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁴

[2] under the influence of a combination of controlled substances or a combination of a controlled substance⁵ and alcohol. _____ is a controlled substance. As part of this element the State must prove beyond a reasonable doubt that the substance in question was, in fact, _____.

If a person ingests (a combination of controlled substances) (a combination of a controlled substance and alcohol) and is not influenced by it, this element has not been proven. If, as a result of ingesting the (combination of controlled substances) (combination of a controlled substance and alcohol), the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of (a combination of controlled substances) (a combination of a controlled substance and alcohol) a person must ingest before being regarded as "under the influence." When a person is so affected by the (combination of controlled substances) (combination of a controlled substance and alcohol) that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."⁶

[3] under the influence of an intoxicating substance.

An "intoxicating substance" means a drug or chemical that, when introduced into the human body, impairs the central nervous system or the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.⁷ [_____ is not a controlled substance.]

["Drug" means all medicinal substances and preparations, biological products, other than blood or blood components, all substances and preparations intended for

use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; and all substances and preparations, other than food, intended to affect the structure or any function of the bodies of humans or other animals.]"⁸

[The term "drug" also means any compound, substance, or derivative that, when introduced into the body, induces an effect similar to that of _____,⁹ regardless of whether the substance is marketed for the purpose of human consumption.]"¹⁰

["Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.]"¹¹

If a person ingests a substance and is not influenced by the substance, this element has not been proven. If, as a result of ingesting the substance, the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of a substance a person must ingest before being regarded as "under the influence." When a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."¹²

[4] under the influence of alcohol.

If a person ingests alcohol and is not influenced by it, this element has not been proven. If, as a result of ingesting the alcohol, the person's ability or capacity is impaired, then this element has been proven.

There is no set standard as to the quantity of alcohol a person must ingest before being regarded as "under the influence." When a person is so affected by the alcohol that the person does not possess that clearness of intel-

lect and control of (himself) (herself) as (he) (she) otherwise would have, that person is “under the influence.”¹³

[5] a blood alcohol concentration of 0.10 or more.

[6] a blood alcohol concentration of less than 0.10 but more than 0.04.

[Fourth, the defendant knew or had reason to know the intoxicating substance had the capacity to cause impairment.]

“To know” requires only that the actor believes that the specified fact exists.

[Fourth] [Fifth], the defendant’s act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COMMENT

Minn. Stat. § 624.7142, subd. 1(1)–(6).

¹In *State v. Ndikum*, 815 N.W.2d 816 (Minn. 2012), the Supreme Court held that knowledge of possession is an element of the crime of possession of a pistol in a public place in violation of Minn. Stat. § 624.714, subd. 1a.

²*State v. Prigge*, 907 N.W.2d 635 (Minn. 2018).

³See Minn. Stat. § 152.01, subd. 4, for the definition of “controlled substance.”

⁴See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

⁵See Minn. Stat. § 152.01, subd. 4, for the definition of “controlled substance.”

⁶See *State v. Stark*, 363 N.W.2d

53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

⁷Minn. Stat. § 169A.03, subd. 11a.

⁸Minn. Stat. § 151.01, subd. 5.

⁹Insert name of one or more substance(s) listed in Schedules I or II. See Minn. Stat. § 152.02, subsd. 2, 3; Minn. Rules 6800.4210, .4220.

¹⁰Minn. Stat. § 151.01, subd. 5.

¹¹Minn. Stat. § 151.01, subd. 8.

¹²See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

¹³See *State v. Stark*, 363 N.W.2d 53 (Minn. 1985); *State v. Graham*, 222 N.W. 909 (Minn. 1929).

Table of Laws and Rules

UNITED STATES CODE ANNOTATED

U.S.C.A. Sec.	This work Instr. No.	25 U.S.C.A. Sec.	This work Instr. No.
802	16.105	450b(e)	7.18, 7.19

MINNESOTA STATUTES

Sec.	This work Instr. No.	Sec.	This work Instr. No.
(2)(7)	11.76	152.021(2)(b)	20.02, 20.04, 20.22
(3)(7)	11.76	152.021(3)(c)	20.02
84.87(1)(f)	29.40	152.022(1)(1)	20.07, 20.08
84.91(1)(3)	29.90, 29.91	152.022(1)(7)	20.12
84.91(1)(c)	29.84, 29.85	152.022(2)(a)(4)	20.13, 20.14
84.787(7)	29.111, 29.117	152.022(2)(b)	20.02, 20.14
84.797(7)	29.111, 29.117	152.023(2)(4)	20.22
86B.331(1)(c)	29.96, 29.97, 29.102,	152.023(2)(6)	20.22
	29.103	152.023(2)(a)(1)	20.19, 20.20
97A.015	13.65	152.023(2)(a)(3)	20.19, 20.20
97A.015(19)	12.03, 12.13, 14.04,	152.023(2)(b)	20.02, 20.20
	14.06, 16.82, 32.17	152.025(1)	20.33, 20.34
97A.015(47)	28.12	152.025(2)(1)	20.35, 20.36
97B.065(1)	28.11, 28.12	152.0262	13.94
123.932(3)	20.08, 20.14	152.0262(1)(b)	13.94, 20.64
123B.41(9). 12.74, 20.02, 20.12, 20.22,		157.01	16.75
20.27, 20.28, 32.02, 32.10, 32.25		168A.1501(1)(d)	16.50
151.01(5)... 11.62, 11.66, 11.68, 11.70,		169.01(2, 3)	16.82
11.72, 11.74, 28.12, 29.08, 29.14,		169.01(61)	11.62, 11.68
29.64, 29.71, 29.85, 29.91, 29.97,		169.09	29.40
29.103, 29.111, 29.117, 32.46		169.09(2)	29.39, 29.40
151.01(8)... 11.62, 11.66, 11.68, 11.70,		169.09(6)	29.40
11.72, 11.74, 28.12, 29.08, 29.14,		169.09(15)	29.40
29.64, 29.71, 29.85, 29.91, 29.97,		169.09(1 and 6)	11.64
29.103, 29.111, 29.117, 32.46		169.011(71)	20.12, 20.22
152.01	32.21	169.13(1)(a)	29.25
152.01(4)	32.46	169.13(3)	29.25
152.01(9)	20.34, 20.36	169.21(2)	29.57
152.01(9a)	20.36	169.21(2)(a)	29.58
152.01(16)	20.34, 20.36	169.21(2)(b)	29.124, 29.125
152.01(24)(1)	20.01, 20.02, 20.03,	169A.03(3)	29.20
20.04, 20.07, 20.08, 20.13, 20.14		169A.03(11a)	11.62, 11.66, 11.68,
152.02 11.40, 11.48, 11.62, 11.66,			11.70, 11.72, 11.74, 28.12, 29.08,
11.68, 11.70, 11.72, 11.74, 20.62,			29.14, 29.64, 29.71, 29.85, 29.91,
28.12, 29.08, 29.14, 29.64, 29.71,			29.97, 29.103, 29.111, 29.117,
29.85, 29.91, 29.97, 29.103,			32.46
29.111, 29.117, 32.46		169A.03(15)	29.08, 29.14
152.021(2)(4)	20.04	169A.03(20)	29.20

MINNESOTA STATUTES—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
169A.03(21)	29.20	609.02(7)....	7.13, 11.31, 12.01, 12.03, 12.13, 13.60, 13.83, 13.85, 14.04, 16.82, 18.28
169A.03(22)	29.20	609.02(7a)	13.58.1, 13.83, 13.85, 13.94
169A.20(1)(3)	29.13, 29.14	609.02(8)	7.15, 7.18, 7.19, 12.03, 12.13, 13.58, 13.58.1, 13.65, 13.85, 17.03, 20.62
169A.20(1)(4)	29.07, 29.08	609.02(9)....	20.12, 20.22, 20.32, 20.42
169A.20(1a)(3)	29.102, 29.103	609.02(9)(2)	12.100, 13.58, 13.60, 13.65, 14.02, 14.04, 14.06, 16.69, 16.99, 17.32, 17.34, 18.28, 18.30, 20.34, 20.36, 29.40, 32.17, 32.21
169A.20(1a)(4)	29.96, 29.97	609.02(9)(3)	11.31, 11.40, 11.48, 12.52, 16.02, 16.38, 16.40, 16.52, 16.69, 18.10, 18.28, 18.46, 20.62
169A.20(1b)(3)	29.90, 29.91	609.02(9)(4)	13.58, 13.58.1, 13.65, 16.99, 17.32, 17.34, 17.43, 22.14
169A.20(1b)(4)	29.84, 29.85	609.02(9)(6)	3.32
169A.20(1c)(3)	29.116, 29.117	609.02(10)(2)	3.32, 13.01, 13.02
169A.20(1c)(4)	29.110, 29.111	609.02(16)	13.58, 13.58.1, 13.65, 13.85
169A.20(2)	29.21, 29.22	609.02(17)	32.17, 32.21
169A.51	29.21, 29.22	609.04	12.88, 12.90, 13.65, 13.83, 16.08, 16.38, 16.40, 16.50, 16.52, 16.69, 16.82, 16.83, 16.99, 20.36
169A.52	29.21, 29.22	609.05(1, 2)	4.01
171.177	29.21, 29.22	609.06	7.15, 7.19, 13.85, 13.86
241.021(1)(f)	20.02, 20.04, 20.08, 20.14	609.06(1)	7.16
243.166	12.99, 12.100	609.06(1)(1)	7.19
243.166(1b)	12.100	609.06(1)(3)	7.13, 7.15
243.166(1b)(a)	12.100	609.06(1)(4)	7.14
243.166(1b)(a)(4)	12.100	609.06(3)	7.19
243.166(1b)(a)(1), (2)	12.100	609.11	CR8-SVF
243.166(1b)(b)(1)	12.100	609.11(9)	20.02, 20.04, 20.08, 20.14
243.166(1b)(b)(3)	12.100	609.19(1)(2)	11.25, 11.27
243.166(3)(b)	12.100	609.19(2)	11.29
243.166(3a)(a)	12.100	609.19(2)(2)	11.30, 11.31
243.166(5a)	12.100	609.20(4)	11.47, 11.48
253B.185	12.100	609.20(1)	11.36, 11.44
256.98	16.82	609.20(2)	11.46
256.98(1)	16.69	609.24	14.01, 14.02, 16.52, 16.82
260B.425	13.86	609.27	13.103, 13.104
260C.201(3)(d)	32.21	609.27(1)(4)	13.104
260C.425	13.86	609.52	16.52, 16.82
268.18	16.82	609.52(1)(3)	16.38, 16.40, 16.50
299F.72(2)	16.82, 18.10	609.52(1)(6)	16.82
302A.551	16.34	609.52(2)(6)	16.12
325E.21(1)	16.50	609.52(2)(7)	16.14
325E.21(1)(e)	16.50	609.52(2)(16)	16.34
325F.731	16.50	609.52(2)(a)(17)	16.22
327.70(3)	16.75, 17.34, 17.43	609.52(3)	16.64, 16.71, 16.99
327.75(2)	16.75	609.52(3)(5)	16.83
340.07	12.03, 13.10, 13.12, 14.04, 14.06	609.52(3)(c)	16.82
340.07(12 and 14)	16.75	609.53	16.52, 16.82
360.0752(2)(a)(3)	29.63, 29.64	609.63	16.52, 16.82
360.0752(2)(a)(6)	29.70, 29.71	609.065	7.15, 7.16
363A.03(12)	13.58, 13.58.1, 13.65, 18.30		
518B.01(2)(a)	11.15		
518B.01(2)(b)	11.15, 13.47, 13.48, 13.58.1, 13.60, 17.32, 17.43		
518B.01(6)(g)	32.21		
604.20(6)	13.58.1		
609.01(6)	12.03, 13.10, 13.12		
609.02	12.03, 12.13, 14.04, 14.06		
609.02(6)	11.56, 12.03, 12.13, 13.58, 13.58.1, 13.65, 14.04, 14.06, 17.03		

MINNESOTA STATUTES—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
609.066.....	7.18	609.344(1)(b).....	12.55
609.066(1).....	7.18	609.344(1)(d).....	12.22
609.66(1a)(a)(2).....	32.08	609.344(1)(m).....	12.112, 12.113
609.66(1e).....	11.27	609.344(1)(n).....	12.116, 12.117
609.66(1e)(c).....	11.27	609.344(1)(o).....	12.120, 12.121
609.066(2).....	7.18	609.345.....	12.56
609.72.....	32.21	609.345(1)(a), (b), (e).....	12.39, 12.40
609.72(1).....	13.120	609.345(1)(b).....	12.40, 12.55
609.72(1)(2).....	13.120, 13.121	609.345(1)(c) and (d).....	12.36
609.74(1, 2).....	13.123	609.345(1)(d).....	12.38
609.106(1)(3).....	12.03, 12.13	609.345(1)(m).....	12.114, 12.115
609.165.....	32.17, 32.20, 32.21	609.345(1)(n).....	12.118, 12.119
609.165(1b).....	32.16, 32.17	609.345(1)(o).....	12.122, 12.123
609.185(b).....	11.13	609.349.....	12.56
609.185(e).....	11.15	609.352(2a).....	12.125
609.195(a).....	11.37, 11.38	609.352(2 and 3)(a).....	12.55, 12.76, 12.76.1
609.195(b).....	11.39, 11.40	609.376.....	13.86
609.205.....	11.56	609.377.....	13.84, 13.85
609.205(1) to (4).....	11.56	609.378.....	13.86, 32.21
609.224.....	11.46, 32.21	609.378(1)(b)(2).....	13.93, 13.94
609.224(3).....	32.21	609.379.....	13.83, 13.85
609.225.....	32.21	609.494.....	5.18
609.228.....	20.61, 20.62	609.506(1, 2).....	22.13, 22.14
609.229.....	32.21	609.526.....	16.50
609.229(1)(1).....	20.02, 20.04, 20.08, 20.14	609.535.....	16.06, 16.08, 16.75
609.232(3).....	13.72	609.535(5).....	16.07, 16.08
609.245.....	14.04, 14.06, 16.52, 16.82	609.551(1, 2).....	16.40
609.245(1).....	14.03, 14.04	609.551(1).....	16.38
609.245(2).....	14.05, 14.06	609.563.....	18.10
609.255.....	13.86	609.581(2).....	17.03
609.255(3).....	13.82, 13.83	609.581(2 and 3).....	17.02, 17.04, 17.06, 17.07, 17.08, 17.09, 17.11, 17.13
609.321(10, 11).....	12.67	609.582(1, 2).....	16.52, 16.82
609.324(1, 3).....	12.66	609.582(1)(b).....	17.03
609.341(3, 14).....	12.01, 12.03, 12.13, 12.23, 12.38, 13.72	609.582(3).....	16.52, 16.82
609.341(3).....	11.21, 12.03, 12.13	609.582(4).....	32.21
609.341(4)(a).....	12.03, 12.13, 12.52	609.595(1a, 2).....	18.29, 18.30
609.341(5), 12.13, 12.38, 12.52, 17.34, 17.43		609.595(1).....	18.27, 18.28
609.341(6).....	12.03, 12.13, 12.23, 12.38	609.595(1a)(b).....	18.30
609.341(7).....	12.03, 12.13, 12.23, 12.38	609.595(2).....	18.28
609.341(9).....	12.03, 12.13, 12.23, 12.38	609.595(2)(c).....	18.30
609.341(10).....	12.05, 12.15, 12.25, 12.40, 12.113, 12.115, 12.117, 12.119, 12.121, 12.123, 13.72	609.595(3).....	18.45, 18.46
609.341(14).....	12.03, 12.13	609.595(4).....	18.28, 18.30
609.341(15).....	12.09, 12.11, 12.19, 12.29, 12.42, 12.44	609.611(1).....	16.71
609.342.....	12.03, 12.56	609.611(4).....	16.71
609.342(1)(a), (b).....	12.04, 12.05	609.625.....	16.52, 16.82
609.342(1)(c), (d), (e), (f).....	12.02, 12.03	609.631.....	16.52
609.343.....	12.13, 12.56	609.665.....	32.21
609.343(1)(a), (b).....	12.14, 12.15	609.666(1).....	20.02, 20.04, 20.08, 20.14
609.343(1)(c) to (f).....	12.12, 12.13	609.666(1)(a).....	12.03, 12.13, 13.65, 14.04, 14.06, 16.82, 16.105, 32.17
609.344.....	12.56	609.668(1).....	11.56
609.344(1)(a), (b), (e).....	12.24, 12.25	609.668(1)(b).....	16.82
		609.713(1).....	13.106, 13.107, 13.111
		609.713(2).....	13.111

MINNESOTA STATUTES—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
609.713(3)	13.110	609.2231(1)(c)	13.21, 13.22
609.746	17.32, 17.34	609.2231(4)	32.21
609.746(1)(a), (b), (e)	17.31, 17.32	609.2242(1)(1)	13.47
609.746(1)(c), (d), (e)	17.33, 17.34	609.2242(1)(2)	13.48
609.746(1)(f)	17.42, 17.43	609.2325(1)(b)	13.71, 13.72
609.748	11.31, 13.65	609.2661(2)	11.21
609.748(6)	13.64, 13.65	609.2661(3)	11.23
609.748(6)(e)	13.65	609.2662(1)	11.33
609.748(6)(f)	13.65	609.2662(2)	11.35
609.749	13.57, 13.58, 13.58.1, 13.59, 13.60, 13.66, 17.32, 17.34, 32.21	609.2663	11.42
609.749(1)	13.58	609.3451	12.52
609.749(1b)(a)	13.58, 13.58.1, 13.60	609.3451(1)(2)	12.90
609.749(1b)(b)	13.58, 13.58.1	609.3451(2)	12.54
609.749(2)	13.57, 13.57.1	609.3451(3)(b)	12.52, 12.54
609.749(2)(1)	13.58	617.23	12.87, 12.88, 12.89, 12.90
609.749(2)(2)	13.66	617.23(1)(1)	12.88
609.749(2)(4)	13.58.1	617.23(2)(1)	12.90
609.749(2)(6)	13.58.1	617.23(3)(2)	12.88
609.749(5)	13.59, 13.60	617.23(b)(1)	12.52, 12.54
609.749(5)(b)	13.60	617.246(4)	12.82, 12.105
609.749(7)	13.66	617.247	12.106
609.821	16.52, 16.82	617.247(3)	12.105
609.821(2)(1)	16.52	617.247(4)	12.107
609.821(2)(9)	16.104	617.247(4)(a)	12.106
609.821(3)(a)(1)(iv)	16.52	617.261	13.103
609.822	16.99	617.261(7)(e)	13.58, 13.58.1
609.822(3)	16.99	617.261(7)(f)	13.58, 13.58.1
609.1095(1)(d)	13.107	617.261(7)(g)	13.58, 13.58.1
609.2111(b)	11.62, 11.64, 11.66, 11.68, 11.70, 11.72, 11.74, 11.76, 11.78, 11.87, 11.89	617.261(7)(h)	13.58, 13.58.1
609.2112	11.62	617.261(7)(i)	13.58, 13.58.1
609.2112(1)(7)	11.64	617.261(7)(j)	13.58, 13.58.1
609.2112(1)(8)	11.87	624.20	16.82, 18.10
609.2112(1)(a)(1) to (6)	11.61	624.712(2)	32.21
609.2113	11.89	624.712(5)	13.107, 32.17, 32.21
609.2113(1)	11.62, 11.64, 11.66, 11.68, 11.70, 11.72, 11.74, 11.76, 11.87, 29.08, 29.14, 29.85, 29.91, 29.111, 29.117	624.712(7)	32.21
609.2113(1)(7)	11.76	624.712(10)	32.21
609.2113(1)(8)	11.88, 11.89	624.713	32.17, 32.20, 32.21
609.2113(1)(1) to (6)	11.67, 11.68	624.713(1)(k)	32.21
609.2113(2)(7)	11.78	624.713(2)	32.20, 32.21
609.2113(2)(8)	11.88, 11.89	624.714(1)	32.36, 32.37
609.2113(2)(1) to (6)	11.71, 11.72	624.714(1a)	32.37, 32.46
609.2113(3)	11.88	624.714(9)	32.37
609.2113(3)(8)	11.89	624.714(9)(a)	32.37
609.2113(3)(1) to (6)	11.73, 11.74	624.714(16)	32.37
609.2114(1)(7)	11.64, 11.76	624.714(23)	32.37
609.2114(1)(8)	11.87	624.7142(1)(1) to (6)	32.45, 32.46
609.2114(1)(a)(1) to (6)	11.65, 11.66	626.04-626.18	29.21, 29.22
609.2114(2)(8)	11.88, 11.89	626.84(1)	7.18, 7.19, 13.58.1
609.2114(2)(1) to (6)	11.69, 11.70	626.84(1)(c)	7.19
609.2231(1)	13.22	626.556(2)(c)	13.68
609.2231(1)(b)	13.21, 13.22	634.04	2.09, 3.18
		634.20	2.07, 3.30
		Ch 152	20.36
		Ch 253D	12.100
		Ch 518B	11.31

TABLE OF LAWS AND RULES

MINNESOTA RULES

Sec.	This work Instr. No.	Sec.	This work Instr. No.
26.02(5)	1.01	6800.4220..	11.62, 11.66, 11.68, 11.70, 11.72, 11.74, 28.12, 29.08, 29.14, 29.64, 29.71, 29.85, 29.91, 29.97, 29.103, 29.111, 29.117, 32.46
6800.4210..	11.62, 11.66, 11.68, 11.70, 11.72, 11.74, 28.12, 29.08, 29.14, 29.64, 29.71, 29.85, 29.91, 29.97, 29.103, 29.111, 29.117, 32.46		

MINNESOTA RULES OF CRIMINAL PROCEDURE

Rule	This work Instr. No.
11.04(2)	3.04, 12.54
26.02(4)(1).....	1.01

MINNESOTA RULES OF EVIDENCE

Rule	This work Instr. No.
404(b)	2.01, 3.16

Table of Cases

A

- Al-Naseer, State v., 690 N.W.2d 744 (Minn. 2005)—11.62
Alarcon, State v., 932 N.W.2d 641 (Minn. 2019)—12.100
Ali, State v., 775 N.W.2d 914 (Minn. Ct. App. 2009)—11.40, 11.48, 20.02, 20.04, 20.08, 20.12, 20.14, 20.20, 20.22, 20.32, 20.34, 20.36, 20.42, 20.62
Allen, State v., 375 N.W.2d 82 (Minn. Ct. App. 1985)—13.49, 13.52
Andersen, State v., 946 N.W.2d 627 (Minn. Ct. App. 2020)—13.56, 13.65
Anderson v. State, Dept. of Public Safety and Dept. of Transp., 305 N.W.2d 786 (Minn. 1981)—11.62
Auchampach, State v., 540 N.W.2d 808 (Minn. 1995)—11.36, 29.58

B

- Backus, State v., 358 N.W.2d 93 (Minn. Ct. App. 1984)—13.22
Bahtuoh, State v., 840 N.W.2d 804 (Minn. 2013)—4.01
Baird, State v., 654 N.W.2d 105 (Minn. 2002)—7.13
Bakdash, State v., 830 N.W.2d 906 (Minn. Ct. App. 2013)—3.32
Bakken, State v., 883 N.W.2d 264 (Minn. 2016)—12.106
Barrientos-Quintana, State v., 787 N.W.2d 603 (Minn. 2010)—2.09, 3.18
Barrow v. State, 862 N.W.2d 686 (Minn. 2015)—20.12, 20.15
Basting, State v., 572 N.W.2d 281 (Minn. 1997)—7.13, 7.14, 7.15, 7.16
Bellcourt v. State, 390 N.W.2d 269 (Minn. 1986)—3.20, 7.17
Benedict, State v., 397 N.W.2d 337 (Minn. 1986)—1.01
Benniefeld, State v., 678 N.W.2d 42 (Minn. 2004)—20.22
Bissell, State v., 368 N.W.2d 281 (Minn. 1985)—2.01, 3.16
Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004)—32.21
Blom, State v., 358 N.W.2d 63 (Minn. 1984)—12.03
Bolte, State v., 530 N.W.2d 191 (Minn. 1995)—2.01, 3.16
Boyce, State v., 284 Minn. 242, 170 N.W.2d 104 (1969)—7.15
Boykin, State v., 312 Minn. 593, 252 N.W.2d 604 (1977)—3.03
Brehmer, State v., 281 Minn. 156, 160 N.W.2d 669 (1968)—11.62, 11.68
Bridgeforth, State v., 357 N.W.2d 393 (Minn. Ct. App. 1984)—13.04
Broten, State v., 836 N.W.2d 573 (Minn. Ct. App. 2013)—13.85
Burnett, State v., 867 N.W.2d 534 (Minn. Ct. App. 2015)—22.02
Bustos, State v., 861 N.W.2d 655 (Minn. 2015)—11.15, 13.60

C

- Carithers, State v., 490 N.W.2d 620 (Minn. 1992)—11.40, 11.48, 20.62
Carothers, State v., 594 N.W.2d 897 (Minn. 1999)—7.16

Carufel, State v., 783 N.W.2d 539 (Minn. 2010)—20.12, 20.22, 32.25
 Clark, State v., 755 N.W.2d 241 (Minn. 2008)—2.09, 3.18
 Clark, State v., 375 N.W.2d 59 (Minn. Ct. App. 1985)—13.49, 13.52
 Cole, State v., 542 N.W.2d 43 (Minn. 1996)—11.29
 Coleman, State v., 957 N.W.2d 72 (Minn. 2021)—11.38
 Coleman, State v., 356 N.W.2d 752 (Minn. Ct. App. 1984)—14.02
 Crace, State v., 289 N.W.2d 54 (Minn. 1979)—11.56

D

Dahlin, State v., 695 N.W.2d 588 (Minn. 2005)—7.13, 7.14, 7.15, 7.16
 Davidson, State v., 351 N.W.2d 8 (Minn. 1984)—12.54, 12.88, 12.90, 13.49, 13.52,
 13.58, 13.58.1, 13.65, 16.50, 16.52, 16.82, 17.32, 17.34, 18.28, 20.36, 29.08,
 29.14, 29.22, 29.85, 29.91, 29.103, 29.111, 29.117, 32.17, 32.21, 32.37
 Decker, State v., 916 N.W.2d 385 (Minn. 2018)—12.54, 12.90
 Devens, State v., 852 N.W.2d 255 (Minn. 2014)—7.13, 7.14, 7.15, 7.16
 Devens, State v., 825 N.W.2d 255 (Minn. 2014)—7.13
 Dorn, State v., 875 N.W.2d 357 (Minn. Ct. App. 2016)—13.04
 Dye, State v., 871 N.W.2d 916 (Minn. Ct. App. 2015)—13.04

E

Edwards, State v., 717 N.W.2d 405 (Minn. 2006)—7.17
 Engle, State v., 743 N.W.2d 592 (Minn. 2008)—3.32
 Estrella, State v., 700 N.W.2d 496 (Minn. Ct. App. 2005)—20.12, 20.22, 32.25
 Ezeka, State v., 946 N.W.2d 343 (Minn. 2020)—4.01

F

Fernow, State v., 354 N.W.2d 438 (Minn. 1984)—16.02
 Ferraro, State v., 290 N.W.2d 177 (Minn. 1980)—16.75
 Fichtner, State v., 867 N.W.2d 242 (Minn. Ct. App. 2015)—29.20
 Fleck, State v., 810 N.W.2d 303 (Minn. 2012)—3.32, 13.01
 Fleck, State v., 810 N.W. 303 (Minn. 2012)—13.02
 Florine, State v., 303 Minn. 103, 226 N.W.2d 609 (1975)—20.22, 20.36, 20.46,
 32.17, 32.21
 Fox, State v., 868 N.W.2d 206 (Minn. 2015)—3.05
 Franks, State v., 765 N.W.2d 68 (Minn. 2009)—13.60, 13.107
 Frost, State v., 342 N.W.2d 317 (Minn. 1983)—11.56

G

Gage, State v., 272 Minn. 106, 136 N.W.2d 662 (1965)—16.02
 Garcia-Gutierrez, State v., 844 N.W.2d 519 (Minn. 2014)—17.03
 Glover, State v., 952 N.W.2d 190 (Minn. 2020)—12.03, 12.13, 13.65, 14.04, 14.06,
 16.82, 32.04, 32.06, 32.08, 32.10, 32.12, 32.14, 32.17, 32.19, 32.21, 32.27,
 32.41
 Glowacki, State v., 630 N.W.2d 392 (Minn. 2001)—7.13, 7.14, 7.15, 7.16
 Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)—

TABLE OF CASES

7.19

Graham, State v., 176 Minn. 164, 222 N.W. 909 (1929)—11.62, 11.66, 11.68, 11.70, 11.72, 11.74, 28.12, 29.08, 29.14, 29.64, 29.71, 29.85, 29.91, 29.97, 29.103, 29.111, 29.117, 32.46

H

Hall, State v., 722 N.W.2d 472 (Minn. 2006)—3.32

Hare, State v., 575 N.W.2d 828 (Minn. 1998)—7.15

Hare, State v., 575 N.W.3d 828 (Minn. 1998)—7.16

Hayes, State v., 826 N.W.2d 799 (Minn. 2013)—11.27

Henderson, State v., 907 N.W.2d 623 (Minn. 2018)—11.62, 11.64, 11.66, 11.68, 11.70, 11.72, 11.74, 11.76, 11.87, 11.89, 29.08, 29.14, 29.85, 29.91, 29.111, 29.117

Hennum, State v., 428 N.W.2d 859 (Minn. Ct. App. 1988)—7.15

Hensel, State v., 901 N.W.2d 166 (Minn. 2017)—13.120, 13.121

Her, State v., 862 N.W.2d 692 (Minn. 2015)—32.21

Higgin, State v., 257 Minn. 46, 99 N.W.2d 902 (1959)—16.75

Horst, State v., 880 N.W.2d 24 (Minn. 2016)—2.09, 3.18

Hoyt, State v., 304 N.W.2d 884 (Minn. 1981)—16.38, 16.40

Huber, State v., 877 N.W.2d 519 (Minn. 2016)—4.01

Hunter, State v., 857 N.W.2d 537 (Minn. Ct. App. 2014)—8.01, 20.14, 20.20, 20.22, 20.46

I

Iverson, State v., 664 N.W.2d 346 (Minn. 2003)—12.100

Ivy, State v., 873 N.W.2d 362 (Minn. Ct. App. 2015)—13.22

J

Jama, State v., 923 N.W.2d 632 (Minn. 2019)—12.88, 12.90

Johnson, State v., 773 N.W.2d 81 (Minn. 2009)—13.60

Johnson, State v., 719 N.W.2d 619 (Minn. 2006)—7.15

Jordan, State v., 272 Minn. 84, 136 N.W.2d 601 (1965)—3.20

Jorgenson, State v., 946 N.W.2d 596 (Minn. 2020)—13.104

Jorgenson, State v., 758 N.W.2d 316 (Minn. Ct. App. 2008)—13.107

Jurek, State v., 376 N.W.2d 233 (Minn. Ct. App. 1985)—1.01

K

Kelley, State v., 855 N.W.2d 269 (Minn. 2014)—1.01, 3.35

Kelly, State v., 435 N.W.2d 807 (Minn. 1989)—11.44

Khalil, State v., 956 N.W.2d 627 (Minn. 2021)—12.03, 12.13, 12.23, 12.38

Korich, State v., 219 Minn. 268, 17 N.W.2d 497 (1945)—13.121

Kramer, State v., 668 N.W.2d 32 (Minn. Ct. App. 2003)—29.58

Kutchara, State v., 350 N.W.2d 924 (Minn. 1984)—13.21

L

LaBarre, State v., 292 Minn. 228, 195 N.W.2d 435 (1972)—20.22, 20.36, 20.46

LaMere v. State, 278 N.W.2d 552 (Minn. 1979)—12.03, 12.13, 14.04, 14.06

Landherr, State v., 542 N.W.2d 686 (Minn. Ct. App. 1996)—11.56
 Lapenotiere v. State, 916 N.W.2d 351 (Minn. 2018)—20.12
 Leinweber, State v., 303 Minn. 414, 228 N.W.2d 120 (1975)—3.20
 Little Falls, City of v. Witucki, 295 N.W.2d 243 (Minn. 1980)—13.121
 Logan, State v., 535 N.W.2d 320 (Minn. 1995)—1.01
 Lopez, State v., 908 N.W.2d 334 (Minn. 2018)—17.02, 17.03, 17.04, 17.06, 17.07, 17.08, 17.09, 17.11, 17.13
 Lowe, State v., 66 Minn. 296, 68 N.W. 1094 (1896)—11.42
 Lutz, unpub. op., State v., 2004 WL 2521193 (Minn. Ct. App. Nov. 9, 2004)—7.14

M

Mankato, City of v. Fetchenhier, 363 N.W.2d 76 (Minn. Ct. App. 1985)—12.88, 12.90
 Mauer, State v., 741 N.W.2d 107 (Minn. 2007)—12.78, 12.82, 12.105, 12.107, 13.58
 Meany, State v., 262 Minn. 491, 115 N.W.2d 247 (1962)—11.62, 11.68
 Merrill, State v., 450 N.W.2d 318 (Minn. 1990)—11.66, 11.70
 Milton, State v., 821 N.W.2d 789 (Minn. 2012)—4.01
 Mollberg, State v., 310 Minn. 376, 246 N.W.2d 463 (1976)—20.22, 20.46
 Moore, State v., 699 N.W.2d 733 (Minn. 2005)—13.04
 Moser, State v., 884 N.W.2d 890 (Minn. Ct. App. 2016)—12.55, 12.76, 12.76.1
 Munger v. State, 749 N.W.2d 335 (Minn. 2008)—17.06
 Munnell, State v., 344 N.W.2d 883 (Minn. Ct. App. 1984)—11.56, 11.62

N

Ndikum, State v., 815 N.W.2d 816 (Minn. 2012)—11.40, 11.48, 20.62, 32.37, 32.46
 Nelson, State v., 806 N.W.2d 558 (Minn. Ct. App. 2011)—11.62

O

O'Heron, State v., 250 Minn. 83, 83 N.W.2d 785 (1957)—28.12
 Olkon, State v., 299 N.W.2d 89 (Minn. 1980)—3.03
 Olson, State v., 435 N.W.2d 530 (Minn. 1989)—3.31, 11.21, 11.23, 11.25, 11.27, 11.29, 11.31, 11.33, 11.35, 11.36, 11.38, 11.40, 11.42, 11.44, 11.46, 11.48, 11.56, 11.62, 11.64, 11.66, 11.68, 11.70, 11.72, 11.74, 11.76, 11.78, 11.87, 11.89, 12.52, 13.58.1, 20.62
 Ott, State v., 291 Minn. 72, 189 N.W.2d 377 (1971)—13.47, 13.48
 Outlaw, State v., 748 N.W.2d 349 (Minn. Ct. App. 2008)—32.21

P

Palmer, State v., 636 N.W.2d 810 (Minn. Ct. App. 2001)—32.37
 Peck, State v., 773 N.W.2d 768 (Minn. 2009)—20.04, 20.14, 20.20, 20.22
 Pegelow, State v., 809 N.W.2d 245 (Minn. Ct. App. 2012)—13.58, 13.58.1
 Pena-Rodriguez v. Colorado, 137 S. Ct. 855, 197 L. Ed. 2d 107, 102 Fed. R. Evid. Serv. 1084 (2017)—1.01, 3.35
 Pendleton, State v., 567 N.W.2d 265 (Minn. 1997)—7.13, 7.14, 7.15, 7.16

TABLE OF CASES

Perry, State v., 725 N.W.2d 761 (Minn. Ct. App. 2007)—13.94
Peterson, State v., 936 N.W.2d 912 (Minn. Ct. App. 2019)—13.57, 13.58, 13.58.1
Press-Enterprise Co. v. Superior Court of California, Riverside County, 464 U.S.
501, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984)—1.01
Prigge, State v., 907 N.W.2d 635 (Minn. 2018)—32.46
Prtine, State v., 784 N.W.2d 303 (Minn. 2010)—3.23

R

Reed, State v., 737 N.W.2d 572 (Minn. 2007)—2.09, 3.18
Reyes, State v., 890 N.W.2d 406 (Minn. Ct. App. 2017)—12.09, 12.11, 12.19,
12.29, 12.42, 12.44
Richardson, State v., 633 N.W.2d 879 (Minn. Ct. App. 2001)—13.60
Ritter, State v., 719 N.W.2d 216 (Minn. Ct. App. 2006)—1.01
Ritter, State v., 486 N.W.2d 832 (Minn. Ct. App. 1992)—28.12
Roden, State v., 384 N.W.2d 456 (Minn. 1986)—16.08
Roden, State v., 380 N.W.2d 520 (Minn. Ct. App. 1986)—16.06
Rodriguez, State v., 863 N.W.2d 424 (Minn. Ct. App. 2015)—17.06
Rogers, State v., 925 N.W.2d 1 (Minn. 2019)—17.03
Rose v. Mitchell, 443 U.S. 545, 99 S. Ct. 2993, 61 L. Ed. 2d 739 (1979)—1.01,
3.35

S

Sanford, State v., 450 N.W.2d 580 (Minn. Ct. App. 1990)—7.15
Sap, State v., 408 N.W.2d 638 (Minn. Ct. App. 1987)—3.03
Scheerle, State v., 285 N.W.2d 686 (Minn. 1979)—3.20
Schluter, State v., 281 N.W.2d 174 (Minn. 1979)—11.44
Schmid, State v., 859 N.W.2d 816 (Minn. 2015)—28.12
Schmieg, State v., 322 N.W.2d 759 (Minn. 1982)—3.03
Schnagl, State v., 907 N.W.2d 188 (Minn. Ct. App. 2017)—11.40, 11.48, 20.62
Schouweiler, State v., 887 N.W.2d 22 (Minn. 2016)—16.07
Schweppe, State v., 306 Minn. 395, 237 N.W.2d 609 (1975)—13.107
Shoop, State v., 441 N.W.2d 475 (Minn. 1989)—2.09, 3.18
Simonson, State v., 298 Minn. 235, 214 N.W.2d 679 (1974)—16.12
Smith, State v., 835 N.W.2d 1 (Minn. 2013)—3.31, 11.21, 11.23, 11.25, 11.27,
11.29, 11.31, 11.33, 11.35, 11.36, 11.38, 11.40, 11.42, 11.44, 11.46, 11.48,
11.56, 11.62, 11.64, 11.66, 11.68, 11.70, 11.72, 11.74, 11.76, 11.78, 11.87,
11.89, 12.52, 13.58.1, 20.62
Smith, State v., 264 Minn. 307, 119 N.W.2d 838 (1962)—3.31, 11.21, 11.23, 11.25,
11.27, 11.29, 11.31, 11.33, 11.35, 11.36, 11.38, 11.40, 11.42, 11.44, 11.46,
11.48, 11.56, 11.62, 11.64, 11.66, 11.68, 11.70, 11.72, 11.74, 11.76, 11.78,
11.87, 11.89, 12.52, 13.58.1, 20.62
Soukup, State v., 656 N.W.2d 424 (Minn. Ct. App. 2003)—7.13, 7.15, 13.120
Spann, State v., 289 Minn. 497, 182 N.W.2d 873 (1970)—11.56
Spence, State v., 768 N.W.2d 104 (Minn. 2009)—17.03
Stanifer, State v., 382 N.W.2d 213 (Minn. Ct. App. 1986)—14.02

Stark, State v., 363 N.W.2d 53 (Minn. 1985)—11.62, 11.66, 11.68, 11.70, 11.72, 11.74, 28.12, 29.08, 29.14, 29.64, 29.71, 29.85, 29.91, 29.97, 29.103, 29.111, 29.117, 32.46

State—(see opposing party)

Stay, State v., 923 N.W.2d 355 (Minn. Ct. App. 2019)—11.46

Stevenson, State v., 656 N.W.2d 235 (Minn. 2003)—12.54

Stout, State v., 273 N.W.2d 621 (Minn. 1978)—16.82

St. Paul, City of v. Mulnix, 304 Minn. 456, 232 N.W.2d 206 (1975)—13.121

Strommen, State v., 648 N.W.2d 681 (Minn. 2002)—2.09, 3.18

Swain, State v., 269 N.W.2d 707 (Minn. 1978)—11.44

T

Taylor, State v., 594 N.W.2d 533 (Minn. Ct. App. 1999)—13.66

Thao, State v., 875 N.W.2d 834 (Minn. 2016)—3.03

Thompson, State v., 950 N.W.2d 65 (Minn. 2020)—22.14

Thompson, State v., 544 N.W.2d 8 (Minn. 1996)—7.13, 7.14, 7.15, 7.16

Thonesavanh, State v., 904 N.W.2d 432 (Minn. 2017)—16.22

T.L.S., In re Welfare of, 713 N.W.2d 877 (Minn. Ct. App. 2006)—13.121

Troxel v. State, 875 N.W.2d 302 (Minn. 2016)—3.20

Ture v. State, 681 N.W.2d 9 (Minn. 2004)—2.01, 3.16

Turnipseed, State v., 297 N.W.2d 308 (Minn. 1980)—3.05

U

Udstuen, State v., 345 N.W.2d 766 (Minn. 1984)—3.03

Ulmer, State v., 719 N.W.2d 213 (Minn. Ct. App. 2006)—17.32, 17.34, 17.43

V

Victor v. Nebraska, 511 U.S. 1, 114 S. Ct. 1239, 127 L. Ed. 2d 583 (1994)—3.03

W

Walker, State v., 306 Minn. 105, 235 N.W.2d 810 (1975)—3.20

Wallert, State v., 402 N.W.2d 570 (Minn. Ct. App. 1987)—2.09, 3.18

Welfare of A. J. B., Matter of, 929 N.W.2d 840 (Minn. 2019)—13.58.1

Welfare of S. L. J., Matter of, 263 N.W.2d 412 (Minn. 1978)—13.121

Welle, State v., 870 N.W.2d 360 (Minn. 2015)—2.01, 3.16

Wemyss, State v., 696 N.W.2d 802 (Minn. Ct. App. 2005)—12.100

White, State v., 292 N.W.2d 16 (Minn. 1980)—13.121

Williams, State v., 324 N.W.2d 154 (Minn. 1982)—16.08, 16.75

Winbush, State v., 912 N.W.2d 678 (Minn. Ct. App. 2018)—20.64

Wiskow, State v., 774 N.W.2d 612 (Minn. Ct. App. 2009)—32.21

Z

Zinski, State v., 927 N.W.2d 272 (Minn. 2019)—2.07, 3.30

Index

ACCESSORIES AND ACCOMPLICES

- Liability for crimes of another, **4.01**
- Testimony, **3.18**

AFFIRMATIVE DEFENSES

- Alcohol, driving under the influence, **29.15**

AIRCRAFT OPERATION

- Under the influence
 - Combination of substances, **29.63, 29.64**
 - Intoxicating substances, **29.70, 29.71**

ALCOHOL OFFENSES

- Defenses, affirmative, **29.15**

ARSON

- Criminal damage to property
 - First degree, **18.28**
 - Fourth degree, **18.45, 18.46**
- Fourth degree offense
 - Defined, **18.45**
 - Elements, **18.46**

ASSAULT

- Bodily harm, infliction of, **13.02**
- First degree, great bodily harm, **13.04**
- Fourth degree, peace officer, **13.22**
- Infliction of bodily harm, **13.02**
- Intent to cause fear, **13.01**

AUTOMOBILES

- Driving, failure to stop and give information, unattended vehicle
 - Defined, **29.43**
 - Elements, **29.44**
- Driving, reckless
 - Defined, **29.25**
 - Elements, **29.26**
- Marijuana, possession of a small amount in a motor vehicle, **20.44**
- Off-road vehicles, operating under the influence, **29.116**
- Overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway
 - Defined, **29.124**
 - Elements, **29.125**
- Unattended vehicles, **29.43, 29.44**

AVIATION

Operation of aircraft

Under the influence

Combination of substances, **29.63, 29.64**Intoxicating substances, **29.70, 29.71****BIAS**Implicit, close of trial, **3.35****BOATS AND BOATING**

Under the influence

Combination of substances, **29.96, 29.97**Intoxicating substances, **29.102, 29.103****BREACH OF PEACE AND DISORDERLY CONDUCT**Definition of disorderly conduct, **13.120****BURDEN OF PROOF**Cognitive impairment, **6.03**Defenses, mental illness or cognitive impairment, **6.03**Mental illness, **6.03****BURGLARY**Second degree, dwelling, **17.06****CANNABINOIDS**Possession, **20.42****CAUTIONARY INSTRUCTIONS**Receipt of testimony of other crime, **2.01**Receipt of testimony of other domestic abuse occurrences, **2.07****CHECKS**Definition, worthless check, **16.07**

Worthless check, issuance

Defined, **16.07**Elements, **16.08****CHILD ABUSE**Murder, elements, **11.13****CHILDREN AND MINORS**

Complainant of sexual conduct, criminal

Fourth degree, **12.42, 12.44**Mistake of age as defense, **12.55**Second degree, **12.19**Third degree, **12.29**Murder in first degree, elements, **11.13**

Solicitation

Child to engage in sexual conduct, **12.76**Mistake of age as a defense, **12.76.1**Surreptitious intrusion, sexual intent, **17.42, 17.43**

CLOSE OF TRIAL

- Accomplice testimony, **3.18**
- Definitions, **3.32**
- Deliberation, duties of jurors, **3.04**
- Direct and circumstantial evidence, **3.05**
- Duties of jurors, **3.04**
- Foreperson, selection of, duties of jurors, **3.04**
- Had reason to know, defined, **3.32**
- Implicit bias, **3.35**
- Instructions on receipt of testimony of other domestic abuse occurrences, **3.30**
- With intent, defined, **3.32**
- Intentionally, defined, **3.32**
- Know, defined, **3.32**
- Lesser crimes, **3.20**
- Proof beyond a reasonable doubt, **3.03**
- Recklessly, defined, **3.32**
- Restraint of defendant, **3.35**
- Return of verdict, duties of jurors, **3.04**
- Testimony as to other crimes, **3.16**
- Unanimous verdict, duty of jurors to discuss, **3.04**

COERCION

- Defined, **13.103**
- Elements, **13.104**

COGNITIVE IMPAIRMENT

- Mental illness or cognitive impairment, this index

CONTROLLED SUBSTANCES

- Generally, **20.01 et seq.**
- See also Drugs and Narcotics, this index
- Carrying a pistol in a public place while under the influence, **32.46**
- Crime in the fifth degree, possession, **20.36**
- Crime in the first degree
 - Possession, **20.03, 20.04**
 - Sale, **20.01, 20.02**
- Crime in the fourth degree, possession, **20.32**
- Crime in the second degree, possession
 - Defined, **20.13**
 - Elements, **20.14**
- Crime in the second degree, sale
 - Defined, **20.07**
 - Elements, **20.08**
- Crime in the third degree
 - Sale, **20.15**
- Crime in the third degree, possession
 - Defined, **20.19**
 - Drug treatment facility, **20.22**
 - Elements, **20.20**

CONTROLLED SUBSTANCES—Cont'd

Crime in the third degree, possession—Cont'd

Park, **20.22**

Public housing, **20.22**

School, **20.22**

Drug paraphernalia, **20.46**

Marijuana, possession of a small amount in a motor vehicle, **20.44**

Methamphetamine manufacturer, possession of precursors, **20.64**

Offenses, possession, **20.42**

Possession, offenses, **20.42**

CRIMES OF ANOTHER

Liability for, **4.01**

CROSSWALKS

Overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway, **29.124, 29.125**

DEFENSES

Alcohol intoxication, affirmative defense, **29.15**

Authorized use of force, **7.06**

Burden of proof, **6.03**

Cognitive impairment, **6.02, 6.03**

Deadly force, authorized use of, peace officers, **7.11**

Death not the result, **7.13, 7.14**

Defense of property, **7.14**

Defense of self or others, **7.13, 7.15**

Intentional taking of life, justifiable, **7.15**

Justifiable taking of life, **7.05, 7.15**

Mental illness, **6.02, 6.03**

Non-deadly, peace officers or officers, **7.12, 7.19**

Sexual conduct, criminal

Mistake of age, **12.55**

Third or fourth degree, mistake of age, **12.55**

Unintentional death, **7.13, 7.14**

DEFINITIONS

Arson, fourth degree, criminal damage to property, **18.45**

Check, worthless, **16.07**

Close of trial, **3.32**

Criminal damage to property, fourth degree, arson, **18.45**

Duress or coercion, **13.103**

Fourth degree, arson, criminal damage to property, **18.45**

Overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway, **29.124**

Trafficking of Supplemental Nutrition Assistance Program (SNAP) benefits, **16.104**

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Close of trial, **3.05**

DISORDERLY CONDUCT

Generally, **13.120**

Defined, **13.120**

DOMESTIC VIOLENCE AND ABUSE

Cautionary instruction on testimony of other domestic abuse occurrences, **2.07**

Closing instruction, testimony of other occurrences, **3.30**

Murder

Second degree, restraining orders

Defined, **11.30**

Elements, **11.31**

Murder in first degree, elements, **11.15**

Testimony of other occurrences

Close of trial, **3.30**

During trial, **2.07**

DRIVING

Failure to stop and give information, unattended vehicle, **29.43, 29.44**

Overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway, **29.124, 29.125**

Reckless, **29.25, 29.26**

Stop, failure to stop, unattended vehicle, **29.43, 29.44**

DRIVING UNDER THE INFLUENCE

Aggravating factors, **29.20**

Alcohol

Affirmative defense, **29.15**

Combined with controlled and/or hazardous substances, **29.07, 29.08**

Controlled substances

Combined with alcohol and/or hazardous substances, **29.07, 29.08**

Intoxicating substances

Generally, **29.13, 29.14**

Combined with alcohol and/or controlled substances, **29.07, 29.08**

Passenger under age 16, **29.20**

DRIVING WHILE IMPAIRED

Aggravated violation (DWI), **29.20**

Alcohol

Affirmative defense, **29.15**

Combined with controlled and/or hazardous substances, **29.07, 29.08**

Controlled substances

Combined with alcohol and/or hazardous substances, **29.07, 29.08**

Intoxicating substances

Generally, **29.13, 29.14**

Combined with alcohol and/or controlled substances, **29.07, 29.08**

Passenger under age 16, **29.20**

DRUG PARAPHERNALIA

Delivery or possession, **20.46**

Manufacture for delivery, **20.46**

DRUG TREATMENT FACILITY, CONTROLLED SUBSTANCES

Possession, **20.22**

DRUGS AND NARCOTICS

See also Controlled Substances, this index

Drug paraphernalia, **20.46**

Drug treatment facility, possession, **20.22**

Fifth degree offenses, possession, **20.36**

First degree offenses

Possession, **20.03, 20.04**

Sale, **20.01, 20.02**

Fourth degree offenses, possession, **20.32**

Marijuana, possession of a small amount in a motor vehicle, **20.44**

Methamphetamine manufacturer, possession of precursors, **20.64**

Motor vehicles, marijuana possession, **20.44**

Offenses, possession, **20.42**

Off-highway motorcycles, combination of substances, **29.110, 29.111**

Off-highway vehicles, combination of substances, **29.110, 29.111**

Possession

Cannabinoids, synthetic, **20.42**

Delivery, **20.46**

Drug paraphernalia, **20.46**

Fifth degree, **20.36**

First degree

Defined, **20.03**

Elements, **20.04**

Fourth degree, **20.32**

Manufacture, **20.46**

Marijuana, **20.44**

Methamphetamine, precursors, **20.64**

Salvia divinorum, **20.42**

Second degree

Defined, **20.13**

Elements, **20.14**

Third degree

Defined, **20.19**

Elements, **20.20, 20.22**

Second degree offenses

Possession, **20.13, 20.14**

Sale, **20.07, 20.08**

Third degree offenses

Drug treatment facility, **20.22**

Park, **20.22**

Possession, **20.19, 20.20**

Public housing, **20.22**

Sale, **20.15**

School, **20.22**

INDEX

DURESS OR COERCION

Definition of coercion, **13.103**

Elements of coercion, **13.104**

DURING TRIAL

Cautionary instruction on receipt of testimony of other crime, **2.01**

Cautionary instruction on testimony of other domestic abuse occurrences, **2.07**

Other crimes or occurrences, testimony as to

Generally, **2.01**

Cautionary instructions, **2.01**

Testimony as to other crimes, cautionary instructions, **2.01**

FINANCIAL TRANSACTION CARD FRAUD

Trafficking of Supplemental Nutrition Assistance Program (SNAP) benefits

Defined, **16.104**

Elements, **16.105**

FOOD STAMPS

Supplemental Nutrition Assistance Program (SNAP) benefits, this index

FORCE, USE OF

Authorized use of

Deadly, peace officers, defense, **7.11**

Defense, generally, **7.06**

Non-deadly, peace officers or officers, defense, **7.12, 7.19**

Criminal sexual conduct, first degree, **12.09**

Deadly, authorized use of, peace officers, defense, **7.11**

Non-deadly, peace officers or officers, defense, **7.12, 7.19**

FOREPERSON

Selection of, duties of jurors, **3.04**

HARASSMENT

Defined, **13.57, 13.57.1**

Elements, **13.58, 13.58.1**

HAZARDOUS PROPERTY OR SUBSTANCES

Operating off-road vehicles under the influence of, **29.116**

HOMICIDE

First degree

Child abuse, **11.13**

Domestic abuse, **11.15**

Second degree, **11.25**

Domestic abuse, restraining orders

Defined, **11.30**

Elements, **11.31**

HOUSING AND URBAN DEVELOPMENT

Controlled substances, possession, **20.22**

IMPEACHMENT OF WITNESS

Cautionary instruction on testimony of other domestic abuse occurrences, **2.07**

INTOXICATING LIQUORS

Carrying a pistol in a public place while under the influence, **32.46**

INTOXICATION

Carrying a pistol in a public place while under the influence, **32.46**

JURY AND JURY TRIAL

Additional issues, advising of, **3.04**

Deliberation, **3.04**

Duties of jurors, **3.04**

Foreperson, selection of, **3.04**

Return of verdict, **3.04**

Unanimous verdict, **3.04**

LARCENY

Lost property, elements of, **16.12**

Property, lost, **16.12**

Worthless check, **16.08**

LESSER AND INCLUDED OFFENSES

Close of trial, lesser crimes, **3.20**

LESSER CRIMES

Close of trial, **3.20**

MARIJUANA

Possession

Motor vehicles, **20.44**

Synthetic cannabinoids, **20.42**

MENTAL ILLNESS OR COGNITIVE IMPAIRMENT

Burden of proof, **6.03**

Defenses

Cognitive impairment, **6.02**

Mental illness, **6.02**

MENTAL ILLNESS OR DEFICIENCY

Mental illness or cognitive impairment, this index

METHAMPHETAMINE MANUFACTURER

Possession of precursors, **20.64**

MINIMUM

Sentencing proceedings, **8.01**

MOTOR VEHICLES

Automobiles, this index

MOTORBOAT OPERATION

Under the influence

Combination of substances, **29.96, 29.97**

Intoxicating substances, **29.102, 29.103**

MULTIPLE ACTS OR MATTERS

- Closing instructions on receipt of testimony of other domestic abuse occurrences, **3.30**
- Instructions on receipt of testimony of other domestic abuse occurrences, **2.07, 3.30**

MURDER

- First degree
 - Child abuse, **11.13**
 - Domestic abuse, **11.15**
- Second degree
 - Domestic abuse, restraining orders
 - Defined, **11.30**
 - Elements, **11.31**
- Second degree, elements, **11.25**

PARKS AND SQUARES

- Controlled substance possession, **20.22**

PEACE OFFICERS

- Assault, **13.22**
- Deadly force, authorized use of, defense, **7.11**
- Non-deadly force, authorized use of, defense, **7.12**

PEDESTRIANS

- Overtaking and passing a vehicle stopped at a crosswalk to permit a pedestrian to cross a roadway, **29.124, 29.125**

PERJURY

- Action, hearing, or proceeding, **22.02**

PORNOGRAPHY

- Minors, pornographic work involving, **12.106**

POSSESSION

- Drugs and Narcotics, this index
- Sentencing proceeding, dangerous weapon or firearm, **8.01**
- Sex crimes, pornographic work involving minors, **12.106**
- Weapons Crimes, this index

PREDATORY OFFENDER

- Committed pursuant to court order, **12.102**
- Convicted or adjudicated delinquent, **12.100**

PRESUMPTIONS AND BURDEN OF PROOF

- Cognitive impairment, **6.03**
- Defenses, mental illness or cognitive impairment, **6.03**
- Mental illness, **6.03**

PROOF BEYOND REASONABLE DOUBT

- Generally, **3.03**

PROSTITUTION

- Engages in, hires, offers, or agrees to sex
- Defined, **12.66**
- Elements, **12.67**

PUBLIC HOUSING, CONTROLLED SUBSTANCES

- Possession, **20.22**

RESTRAINING ORDER

- Murder, second degree, domestic abuse, **11.30, 11.31**

RESTRAINT

- Defendant, close of trial, **3.35**

SALVIA DIVINORUM

- Possession, **20.42**

SCHOOL PROPERTY

- Controlled substances, possession, **20.22**

SCHOOLS

- Property, possession of controlled substances, **20.22**

SENTENCE AND PUNISHMENT

- Mandatory minimum, **8.01**
- Possession of dangerous weapon or firearm, **8.01**

SEXUAL CONDUCT, CRIMINAL

- Fifth degree, complainant underage, **12.55**
- First degree
 - Generally, **12.09**
 - Complainant underage, **12.04**
 - Force, use of, **12.09**
 - Significant relationship, **12.11**
- Fourth degree
 - Complainant 16-18, **12.42, 12.44**
 - Complainant underage, **12.55**
 - Defense of mistake of age, **12.55**
 - Mistake of age as defense, **12.55**
 - Significant relationship, **12.42, 12.44**
- Mistake of age as defense, **12.76.1**
- Second degree
 - Generally, **12.19**
 - Complainant under 16, **12.19**
 - Significant relationship, **12.19**
- Solicitation, child to engage in sexual conduct
 - Defense, mistake of age, **12.76.1**
 - Elements, **12.76**
- Third degree
 - Complainant 16 to 18, **12.29**
 - Complainant underage, **12.25**
 - Defense of mistake of age, **12.55**

SEXUAL CONDUCT, CRIMINAL—Cont'd

Third degree—Cont'd

Mistake of age as defense, **12.55**

Significant relationship, **12.29**

SEXUAL RELATIONS AND OFFENSES

First degree

Complainant underage, **12.04**

Significant relationship, **12.11**

Fourth degree

Complainant 16-18, **12.42, 12.44**

Defense of mistake of age, **12.55**

Mistake of age as defense, **12.55**

Significant relationship, **12.42, 12.44**

Harassment

Defined, **13.57, 13.57.1**

Elements, **13.58, 13.58.1**

Mistake of age as defense, **12.76.1**

Prostitution, this index

Second degree

Generally, **12.19**

Complainant under 16, **12.19**

Significant relationship, **12.19**

Solicitation, child to engage in sexual conduct

Defense, mistake of age, **12.76.1**

Elements, **12.76**

Stalking

Definition, **13.59**

Elements, **13.60**

Surreptitious intrusion, **17.42, 17.43**

Third degree

Complainant 16 to 18, **12.29**

Complainant underage

Defense, mistake of age, **12.55**

Elements, **12.25**

Defense of mistake of age, **12.55**

Mistake of age as defense, **12.55**

Significant relationship, **12.29**

SIGNIFICANT RELATIONSHIP

Criminal sexual conduct

First degree, **12.11**

Fourth degree, elements, **12.42, 12.44**

Second degree, **12.19**

Third degree, **12.29**

Sexual conduct, criminal

First degree, **12.11**

Fourth degree, **12.42, 12.44**

Second degree, **12.19**

SIGNIFICANT RELATIONSHIP—Cont'd

Sexual conduct, criminal—Cont'd

Third degree, **12.29**

SNOWMOBILE/ALL-TERRAIN VEHICLE

Operation under the influence

Combination of substances, **29.84, 29.85**

Intoxicating substance, **29.90, 29.91**

SOLICITATION

Child to engage in sexual conduct, **12.76, 12.76.1**

Mistake of age as defense, **12.76.1**

SPECIAL VERDICTS

Aggravating factors, verdict form, **CR8 to SVF**

STALKING

Defined, **13.59**

Elements, **13.60**

**SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)
BENEFITS**

Theft and related crimes, trafficking of benefits

Defined, **16.104**

Elements, **16.105**

SURREPTITIOUS INTRUSION

House or dwelling place, **17.31, 17.32**

Sexual intent regarding a minor, **17.42, 17.43**

THEFT

Checks, worthless, **16.08**

Lost property, elements of, **16.12**

Property, lost, **16.12**

Worthless checks, **16.08**

THEFT AND RELATED OFFENSES

Financial transaction card fraud, **16.104, 16.105**

THREATS

Violence

Generally, **13.106 to 13.111**

BB guns, **13.110, 13.111**

Replica firearms, **13.110, 13.111**

Violent crime, threat to commit, **13.106, 13.107**

TRAFFIC

Automobiles, this index

Intoxicating substances, operating off-road vehicles under the influence of,
29.116, 29.117

Off-highway motorcycles, combination of substances, **29.110, 29.111**

Off-highway vehicles, combination of substances, **29.110, 29.111**

TRAFFIC STOPS

Intoxicating substances, operating off-road vehicles under the influence of,
29.116, 29.117

**TRAFFICKING OF SUPPLEMENTAL NUTRITION ASSISTANCE
PROGRAM (SNAP) BENEFITS**

Defined, 16.104

Elements, 16.105

VEHICLES

Automobiles, this index

VERDICT

Close of trial, 3.04

Unanimous verdict, duty of jurors, 3.04

WEAPONS AND FIREARMS

Felon in possession of firearm, ammunition, 32.16, 32.17

Possession

Pistol or semi-automatic military-style assault weapon

Ammunition, ineligible persons, 32.20, 32.21

Threats of violence, 13.110, 13.111

WEAPONS CRIMES

Carrying pistol in public place, 32.46

Felon in possession of firearm, ammunition, 32.16, 32.17

Firearm silencer

Defined, 32.24

Elements, 32.25

Military style weapons, 32.20

Pistols, 32.20, 32.21, 32.46

Possession

Alcohol, 32.46

Controlled substance, 32.46

Defined, 32.20

Elements, 32.20

Felon, 32.17

Firearm silencer, 32.24, 32.25

Military style assault weapon, ammunition, 32.20, 32.21

Pistol, 32.20, 32.21

Pistol or semi-automatic military-style assault weapon

Ammunition, ineligible persons, 32.20, 32.21

Public place, pistol carry, 32.46

Threats of violence, 13.110, 13.111





